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JUSTICE

Vol.32 ACTUALITÉS - REPORT No.2

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CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

JUSTICE

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EDITORIAL

IRVING KULIK
CCJA Executive Director

This issue of the *Justice Report* ushers in a brand new, more modern and trendy look. It is one of the initiatives we are undertaking as we gear up to celebrate our 100th anniversary in 2019. As members, you will see other changes and initiatives over the next two years. If you are a reader, but not yet a member of the CCJA, we urge you to join for the very modest cost of annual membership. Going forward into our next century, we need and value a diverse range of opinions to help us formulate and suggest evidence-based criminal justice policies that are appropriate for Canada's second century.

Our centennial Congress in 2019 will be co-hosted with our colleagues at the Société de criminologie du Québec, with who we also partnered for Congress 2011. More information will be shared with you as it becomes available in the months to come. In the meantime, Congress 2017 is just around the corner and in partnership with our affiliate, the Criminal Justice Association of Ontario, and the Ontario Ministry of Children and Youth Services. It will be taking place at the Sheraton Centre Hotel in downtown Toronto from October 25-27. The detailed programme is listed in this issue and, in reviewing the subjects to be presented, I am certain that this is a conference you do not wish to miss. Plan to attend and register now!

It is now common practice for companies to send survey requests to their clients seeking a few minutes of their time to respond to questions and rate dozens of elements. Given the number of surveys we sometimes receive it may become tiresome. Nonetheless, without asking you to fill out another survey, please do send us your own comments about this publication. Do you like the look, the content or other aspects? Are there issues and stories you would like us to cover and pursue? All comments will be appreciated and carefully reviewed. You can send these to **ccja-acjp@rogers.com**.

Finally, I would like to take this opportunity to kick off a contest for our 100th anniversary logo. If you have a penchant for the creative and artistic this is your opportunity for greatness and recognition. You should incorporate our official logo, but the rest is up to you! ■

CANADIAN YOUTH & JUSTICE
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Ce numéro de l'*Actualité-Justice* vous présente un tout nouveau look, plus moderne et tendance. Cette nouvelle image est l'une des initiatives entreprises en vue des célébrations de notre 100e anniversaire en 2019. En tant que membres, vous verrez d'autres changements et initiatives au cours des 2 prochaines années. Si vous êtes un lecteur, mais pas encore membre de l'ACJP, nous vous invitons fortement à y adhérer pour un coût annuelle correspondant à votre budget. À l'aube de notre prochain siècle, nous sommes à la recherche d'un large éventail d'opinions pour nous aider à formuler et proposer des politiques en lien à la justice pénale fondées sur des recherches représentant le deuxième siècle du Canada.

Notre congrès du centenaire 2019 sera organisé conjointement avec nos collègues de la Société de criminologie du Québec, avec qui nous avons également collaboré lors du Congrès de 2011. Plus d'informations vous seront partagées dans les mois à venir. En attendant, en partenariat avec notre affilié, l'Association de justice pénale de l'Ontario et le Ministère des services à l'enfance et à la jeunesse de l'Ontario, il nous fait plaisir de vous inviter au Congrès 2017 qui lieu au Sheraton Center Hotel de Toronto du 25 au 27 octobre. Le programme détaillé présente dans ce numéro, je suis certain, en intéressera plusieurs. Je suis convaincu qu'il s'agit d'une conférence que vous ne souhaiterez manquer et je vous invite à vous y inscrire dès maintenant!

Comme vous le savez, il est maintenant courant pour les entreprises de sonder leurs clients et de leur demander quelques minutes de leur temps pour répondre à certaines questions afin d'améliorer leurs services. Étant donné le nombre d'enquêtes que nous recevons parfois, cela peut devenir ennuyeux. Néanmoins, sans vous demander de remplir un autre sondage, je vous invite chaleureusement à nous envoyer vos propres commentaires à propos de cette publication. Aimez-vous le nouveau look, le contenu ou d'autres aspects? Y a-t-il des problématiques et des histoires que vous souhaiteriez que nous couvrions? Tous les commentaires seront appréciés et soigneusement examinés. Veuillez nous en faire part à **ccja-acjp@rogers.com**.

Enfin, j'aimerais profiter de cette occasion pour lancer le concours pour notre logo du 100e anniversaire. Si vous avez un penchant pour la créativité et le design graphique, c'est l'opportunité pour vous faire connaître ou pour élargir votre reconnaissance. Vous devrez incorporer notre logo officiel, mais le reste dépend de vous! ■

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CANADIAN CRIMINAL JUSTICE ASSOCIATION AWARDS ACKNOWLEDGING EXCELLENCE

PRIX D'EXCELLENCE DE L'ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

CALL FOR NOMINATIONS FOR THE FOLLOWING AWARDS:

- **WILLIE-GIBBS LIFETIME ACHIEVEMENT AWARD**
- **CERTIFICATE OF APPRECIATION**
- **CRIME PREVENTION AWARD**
- **PUBLIC EDUCATION AWARD**
- **RESEARCH AWARD**
- **RESTORATION AWARD**
- **THE SENATOR EARL A. HASTINGS AWARD**
- **THE ANTONY HOLLAND AWARD**

Please send your nominations,
replete with support letters,

BY EMAIL: **ccja-acjp@rogers.com**

OR BY POSTAL MAIL:
CCJA/ACJP Att: Geneviève Bouchard Boudreau
101-320, av. Parkdale Ave., Ottawa (ON) K1Y 4X9

DEADLINE: July 17, 2017

APPEL DE CANDIDATURES POUR LES PRIX SUIVANTS :

- **PRIX WILLIE GIBBS POUR L'ENSEMBLE DES RÉALISATIONS**
- **CERTIFICAT D'APPRÉCIATION**
- **PRIX DE PRÉVENTION DU CRIME**
- **PRIX D'ÉDUCATION DU PUBLIC**
- **PRIX DE RECHERCHE**
- **PRIX DE LA RÉCONCILIATION**
- **PRIX SÉNATEUR EARL A. HASTINGS**
- **PRIX ANTONY HOLLAND**

Veuillez effectuer vos mises en candidature,
accompagnées de lettres d'appui,

PAR COURRIEL : **ccja-acjp@rogers.com**

OU PAR LA POSTE :
CCJA/ACJP Att: Geneviève Bouchard Boudreau
101-320, av. Parkdale Ave., Ottawa (ON) K1Y 4X9

DATE LIMITE : 17 juillet 2017

DESCRIPTIONS OF AWARDS - DESCRIPTIONS DES PRIX

THE WILLIE-GIBBS LIFETIME ACHIEVEMENT AWARD recognizes people who have distinguished themselves by their contribution to the improvement of the Criminal Justice System in Canada and to the achievement of the objectives of the CCJA.

LE PRIX WILLIE GIBBS POUR L'ENSEMBLE DES RÉALISATIONS permettra de reconnaître les personnes qui se sont illustrées par leur contribution à l'amélioration du système de justice pénale au Canada et à l'atteinte des objectifs de l'ACJP.

THE CERTIFICATE OF APPRECIATION may be presented to individuals who have made a significant contribution to the CCJA. There is no requirement to be a member of the CCJA in order to receive this Award.

LE CERTIFICAT D'APPRÉCIATION pourra être remis à toute personne qui a contribué de manière exceptionnelle au travail et aux objectifs de l'ACJP.
Il n'est pas requis que cette personne soit membre de l'Association pour être admissible à ce prix.

THE CRIME PREVENTION AWARD recognizes individuals or organizations in Canada who have made a significant contribution to the reduction of criminal behaviour and to the protection of the public.

LE PRIX DE LA PRÉVENTION DU CRIME sera remis en vue de reconnaître une personne ou un organisme qui s'est illustré en contribuant de manière importante à une réduction des comportements criminels et à la protection du public.

THE RESEARCH AWARD may be granted to recognize an individual or group who completed valid and reliable research that resulted in substantial improvement to the operations of the criminal justice system.

LE PRIX DE RECHERCHE sera remis en vue de reconnaître une personne ou un groupe de personnes ayant effectué des études valides et fiables et qui ont donné lieu à des améliorations importantes dans le fonctionnement du système de justice pénale.

THE PUBLIC EDUCATION AWARD recognizes work by professional journalists and other persons who significantly advance public understanding in Canada of the need for, and elements of, a humane, effective criminal justice system.

LE PRIX D'ÉDUCATION DU PUBLIC vise à reconnaître le travail de journalistes professionnels et d'autres personnes qui contribuent à une meilleure compréhension des Canadiens et des Canadiennes du besoin qu'on a et des composantes d'un système de justice humain et efficace.

THE RESTORATION AWARD may be granted to victims or former offenders who have overcome the challenge of their past and made an exemplary contribution towards rehabilitation, restoration and a more humane and effective justice system.

LE PRIX DE LA RÉCONCILIATION peut être décerné à une victime ou à un ex-délinquant qui est parvenu à évacuer les difficultés de son passé et qui a contribué de manière exemplaire au processus de réhabilitation ou de réconciliation ainsi qu'à la réalisation d'un système de justice plus humain et plus efficace.

To commemorate the contribution of the late **SENATOR EARL HASTINGS** to the Canadian criminal justice system and the CCJA, this Award honours Canadians who, although they do not work in the criminal justice system, have made an outstanding contribution over many years to the Canadian criminal justice system.

Créé dans le but de commémorer la contribution de feu le **SÉNATEUR EARL HASTINGS** au système de justice pénale et à l'ACJP, ce Prix veut honorer des Canadiens et des Canadiennes qui, même s'ils n'oeuvrent pas dans le domaine de la justice pénale, y ont tout de même contribué de manière exceptionnelle sur plusieurs années.

THE ANTONY HOLLAND AWARD is to recognize and promote the contribution of the theatrical arts to the achievement of a humane and effective criminal justice system.

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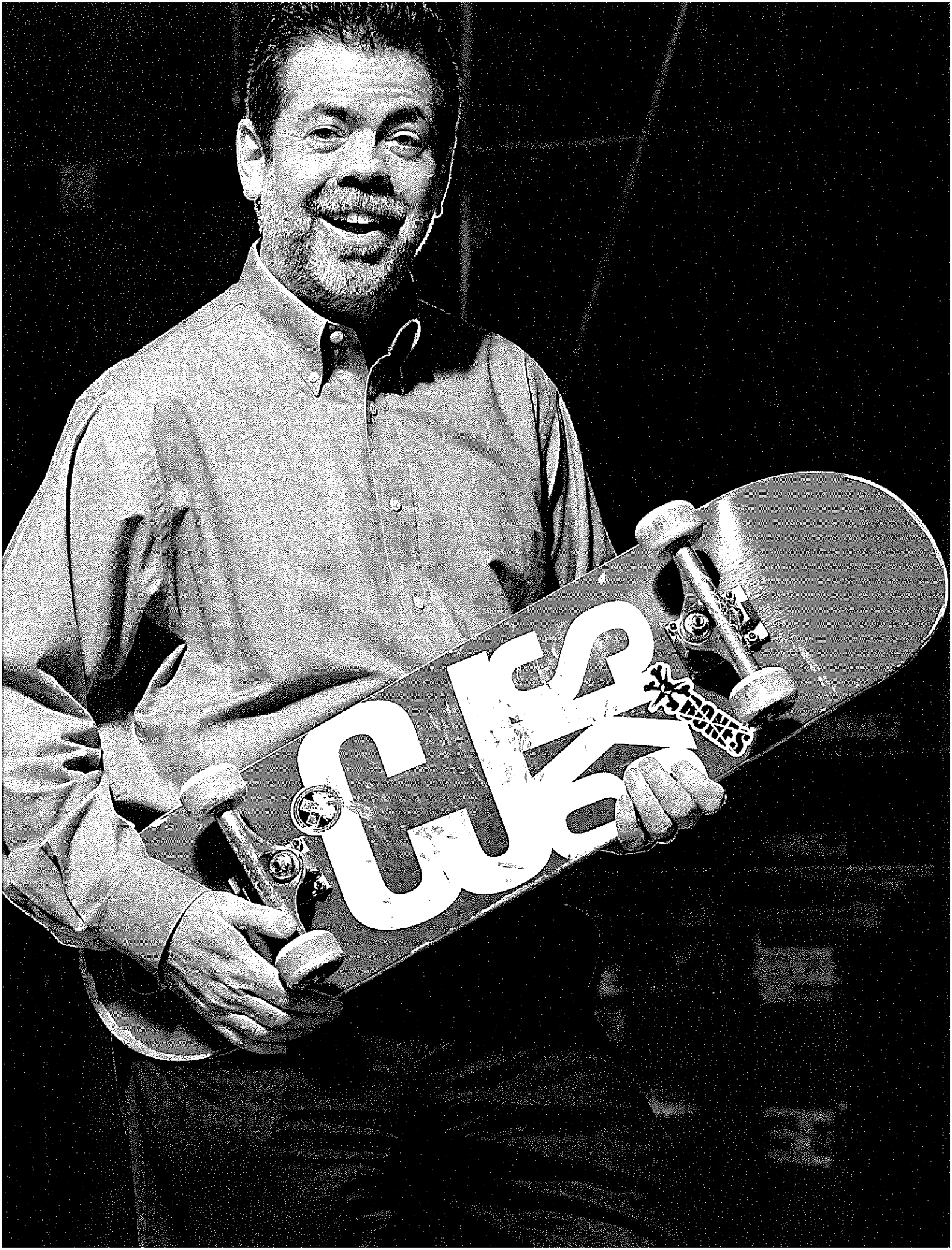
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CCJA INTERVIEW WITH JAY MANDARINO

Website: www.ccja-acjp.ca/pub/en/ ■ Justice Report Section: www.ccja-acjp.ca/pub/en/justice-report/

Jay Mandarino is the President & Founder of The C.J. Skateboard Foundation and the CJs SKATEPARK Not-for-Profit. Over the past 26 years, Jay has raised more than $50 million dollars for hundreds of charities worldwide by performing as a professional auctioneer donating through JBM Auction Services.

This interview with the dynamic and multi-talented philanthropist and entrepreneur, Mr. Jay Mandarino, offers a message of hope for the increasing numbers of children and young people in the school system or work place who find themselves unable to succeed due to learning disabilities and other difficulties. Jay challenges society in regard to troubled children and youth by bringing such problems into the realm of normal. He offers himself up as a living example of how "a great school, great parents, support, hard work, skateboarding, a bit of luck, and the drive to never give up" saved him. As a philanthropist, Jay donates his time delivering "his own simple story" to raise awareness about the importance of giving back to society. Among other projects, Jay has established the fourth largest indoor Not-for-Profit skateboard park in the world in Toronto. CJ's SKATEPARK is a non-profit aimed at helping youth who have, as he did, learning disabilities or other health problems (such as cancer), but do not have access to adequate supports at home or in the community.

HELPING OUR YOUTH SUCCEED AND OVERCOME BARRIERS

◆ Mr. Mandarino, could you talk to us about yourself... your path?

Yes, I'll start at the beginning. As a child, I was a victim of constant bullying. I was told that I was stupid and often laughed at in school because I had trouble reading and writing. This was extremely humiliating and I would go home in tears almost daily with little to no self-esteem. There were a few great teachers but lots of not great teachers. Most of the teachers were not helpful or did not understand my challenges. I attempted suicide at the young age of 8. I was institutionalized for several months and my parents were then told I was destined for low-level employment and to forget about me ever succeeding in high school or university. Fortunately, my parents did not listen and never gave up on me. Eventually, through an LDAO (Learning Disabilties Association of Ontario) referral, I was diagnosed (at age 14) with Dyslexia and ADHD by a psychologist. My parents sold their house and sent me to The Gow School, a private school in upper state New York specializing in these afflictions. I graduated top of my class with honours and during my time at school became a skilled skateboarder, gaining

notoriety in 1976 for being the first person in the world to jump over a Ferrari. Returning to Canada, I then attended a pilot program at York University that allowed me to do my exams orally and get extra time and other accommodations.

I then had another challenge (ski accident) that ended up putting me in the hospital for almost 6 months, 110 hours of surgeries and then rehab from a wheel chair, crutches and then canes for over 10 years to learn to walk again! During this time I ventured out and started my own business… I made my first million by the time I was 30. I now have 30 companies, with over $35 million in sales and still growing. One of those companies, C.J. Graphics Inc., is one of the most quality-awarded printers in North America, having received over 6500 Awards to date!

I have also opened Etobicoke's CJ Skateboard Park and School, the 4th largest indoor Not-For-Profit Skateboard Park in the world, to benefit all kids in our community, especially those who are sick, at-risk or have special needs. As part of my philanthropic work, I also frequently donate my time as an auctioneer for over 60 of the largest fund-raising events in Canada and across North America. I've been fortunate enough to work with many movie stars, singers, and rappers—the audiences love this part of my 'show'! I have written and published a Joke book for charity, which is in its second printing, and also am just finishing a how-to learn to skateboard book for parents and kids. I sit on the board of LDAO (Learning Disabilities of Ontario) and The Michael Pinball Clemmons Foundation. I am blessed and happily married to an amazing woman!

I HAVE INCLUDED A FEW VIDEO LINKS, TO PROVIDE A LITTLE MORE INSIGHT INTO MYSELF!

Print Leader of the Year 2015 Video:
https://drive.google.com/file/d/0B_A1G26825KIUW5aa2prMGVVNEE/view?usp=sharing

Here are some of the things I do to give back to the community when I'm not busy running 30 different printing/large format/display companies and donating my auctioneer services to over 60 + galas a year:

This is a show called "Top of The Town" produced by Rogers at CJ'S with the segments on our free "Kids being Kids" program for kids and families affected by cancer.
https://drive.google.com/file/d/0B16Cg3LFo_DBSlJqeDJhQy1DTXc/view?usp=sharing

Video from March 25th 2017 at CJ's SKATEPARK
https://youtu.be/Z6JmvZqfO88

Please share this link, pass it along to everyone - let's get the word out to more kids and their families! "Kids being Kids"-a program which is free for kids affected by cancer and their families.

◆ How does your experience as a successful entrepreneur inform your work as a philanthropist?

As an entrepreneur who has started and built companies with nothing and now owning and running 30 companies with over 33 million in revenue, I feel we all have to do our part to give back philanthropically. I must tell you I love this part. Everyone may say you have to donate money, but I think that your time is equally if not more important. Giving back! And whenever you see the difference you are making in others… it's a wonderful feeling!

◆ What ultimately got you started? How and why did you decide to help the at-risk youth community?

We all have something to contribute, something that makes us feel good inside. I wanted everyone to have those opportunities that I did not have and now have been able to give back to make a difference for others. I decided to focus on at-risk youth because in some cases it is the last chance to steer them in the right life direction, to avoid the dark path.

◆ Could you talk to us about the value to at-risk youth of the CJ Skateboard Park and School initiative?

Although the parents, kids & youth think it's only about a cool sport with lots of fun, exercise, core strength, and many other such benefits, the idea behind the skateboard, scooter and in-line park is in fact about community engagement for youth—so they feel involved and part of something— instilling creativity, self-esteem and self-confidence. You might even say it gives them a sense of belonging and the realization that anyone can succeed and achieve all this through hard work and determination in a fun and safe environment.

We are having incredible success with kids before they become 'youth' and then with 'youth' by getting them to help each other, which is very rewarding for both myself and our team. Getting them to participate in a sport and help someone else, whether it be any young

kid or a kid with a disability or suffering from cancer, is empowering for anyone. For youth, mobilizing their incredible energy towards a positive goal empowers them - for the first time in many cases, as they have never experienced this feeling before.

We have some funding available for youth whose parents do not have the money to send them to our skateboard Park. Here is an article on our Not-for-Profit skate park I think your readers might enjoy: http://bitly/1JGWdxL

◆ What are your thoughts on the current crime prevention efforts in public schools and among policy makers?

My personal current thoughts are that although we have some great people and ideas, the issue is larger than we think. We all need to get together and change the system for the better. We need early intervention and detection, before these kids grow into teenagers, before they come into contact with the criminal justice system. They need to be targeted in schools and in communities and helped at a young age. It is much harder to give guidance and motivate them onto a different path once they have reached the point where they have begun to join the 'dark side'—which they do to feel accepted, to gain a feeling of belonging—as by then they often have very low if any self-esteem.

I believe policy makers should be trying to adapt our public education system to better identify these kids before they drop out, or before they get to high school. A primary school principal told me recently that they can tell in grade one which children are likely to not finish high school!

◆ How would you evaluate the crime prevention aspect of a program such as yours?

By looking at outcomes! We have great success and my team and I are very excited about our results because they tell us that we are making a difference, and we witness it every day.

◆ Finally, what do you foresee for the future?

What a tough question! On one hand I'm extremely worried, on the other hand there are moments of optimism! The world is a crazy place now with so many more challenges for young people then there was before! In a lot of cases we are setting them up for failure instead of preparing then to contribute to society! ■

RÉSUMÉ

Entrevue de l'ACJP avec Jay Mandarino

Site Web : www.ccja-acjp.ca/pub/fr/
Section relative à Actualités-Justice :
www.ccja-acjp.ca/pub/fr/actualites-justice/

Cet article présente une entrevue avec l'entrepreneur et philanthrope dynamique aux talents multiples, M. Jay Mandarino, et offre un message d'espoir pour le nombre croissant d'enfants et de jeunes gens en milieu scolaire ou de travail, qui sont incapables de réussir en raison d'un handicap ou d'autres difficultés. M. Mandarino interpelle la société en ce qui a trait aux enfants et aux jeunes gens en difficulté en ramenant leurs problèmes dans le cadre de la normalité. Il se donne en exemple du fait qu'une bonne école, de merveilleux parents, un bon appui, un travail acharné, un peu de chance et l'instinct de ne jamais abandonner l'ont sauvé. Comme philanthrope, M. Mandarino donne de son temps pour présenter sa simple histoire dans le but de sensibiliser les gens à l'importance de redonner à la société. Au nombre de ses autres projets, il a mis en place un parc de planches à roulettes à Toronto, la 4e plus grande installation intérieure sans but lucratif au monde, pour aider les jeunes qui, comme lui, ont des difficultés d'apprentissage ou d'autres problèmes, tel le cancer,et qui n'ont pas accès à des appuis adéquats à la maison ou dans la collectivité.

Jay Mandarino est également le directeur et fondateur du C.J. Skateboard Foundation. Grâce à ses 27 années d'expérience et quelque 50 événements annuels, Jay Mandarino peur venir en aide à nombre d'organisations en mettant à contribution ses talents de commissaire-priseur animé. Sa devise : *donnez un coup de main en levant la vôtre*. Son site Web se trouve à l'adresse : www.jbmauctionservices.com. Il est membre de l'Association pour les troubles d'apprentissage de l'Ontario et a été coprésident pendant 8 ans de son programme de lutte au décrochage scolaire [Stay inSchool Program]; il est actuellement coprésident et fondateur du petit-déjeuner annuel de financementde l'Association. Il siège également au conseil d'administration de la Michael "Pinball" Clemons Foundation.

Facebook: www.facebook.com/jay.mandarino.3
Article portant sur Not-For-Profit C.J. Skateboard Park & School :
http://bit.ly/1JGWdxL

The Incarceration Crisis in the United States of America

CINDY WHITTEN-NAGLE

Whitten's evidence-based report on the impact of the war of drugs in the United States of America (US) is a compelling and powerful read. Pointing out that the inception of mandatory minimum sentencing for drug offences has led to an explosion of prison populations unmatched in any other developed nation except for Russia, which was found to be comparable in a 2011 study, Whitten also notes that US prisons are operating above capacity and that sentencing inequalities exist. In addition, this aggressively punitive approach to drug control has not been effective in reducing recidivism rates. Questioning the laws and policies put in place over the past twenty years in the name of the war on drugs, Whitten argues that other measures of combating drug crimes are desperately needed in the US.

The incarceration rates in the USA are unprecedented by any other developed country. The war on drugs and subsequent mandatory minimum sentencing policies have facilitated a substantial growth in prison populations, causing many US prisons to operate well above capacity (Zanis, Coviello, Lloyd, & Nazar, 2009). Since the enactment of mandatory minimum sentences resulting from the war on drugs, drug offenders account for vast majorities of those incarcerated in the US (Messer, Patten, & Candela, 2016). Despite its punitive approach to criminality; however, the rates of recidivism remain high within in the US (Dickson, 2014), thus suggesting that these tough-on-crime policies are ineffective.

INCARCERATION RATES IN THE US: A BRIEF COMPARATIVE ANALYSIS

The US is plagued with incarceration rates unparalleled in any developed nation; in terms of population-based incarceration rates, America the US is the most punitive country in the world (Lynch & Pridemore, 2011). For instance, the International Center for the Study of Prisons (ICSP) states that there were 760 persons per 100,000 incarcerated in the United States in 2008 (Lynch & Pridemore, 2011). The rate of incarceration between this country and other industrialized nations encompasses a wide gap; the United Kingdom reported 153 incarcerated persons per 100,000, Australia reported 129 per 100,000, and Canada reported 116 per 100,000 for the same year (Lynch & Pridemore, 2011). Only Russia was comparable to the US, with 626 per 100,000 incarcerated persons (Lynch and Pridemore, 2011).

Importantly, the incarceration statistics for the United States does not include community-based facilities and incarcerated juveniles whereas many other countries do in fact include these numbers, suggesting that the disparity in imprisonment numbers between America and other countries is possibly much larger (Sheldon, 2004). Studies show that, apart from incarceration rates, there are close to another five million people on probation or parole in the US, thus bringing the number of people involved with the Criminal Justice System in that country the highest among developed countries (Benson, 2003).

INCARCERATION RATES FOR FEMALES INCREASED BY 95% OVER 10 YEARS

The war on drugs has had a profound effect on the number of incarcerated women. Sheldon (2004) has pointed out that the number of women sentenced to incarceration for drug offences between 1986 and 1996 increased by 95%. Similarly, the war on drugs has also led to increases in juvenile incarceration rates, notably for girls (Sheldon, 2004). The incarceration rate for females went from 8 per 100,000 in 1975 to 59 per 100,000 in 2001 (Sheldon (2004). One study found that over 50% of incarcerated women in state prisons had either one or no prior offences compared to 39% of male prisoners in state correctional facilities (Sheldon, 2004).

US INCARCERATION RATES FOR BLACK MALES EXCEEDS THOSE FOR WHITE MALES BY 8 TO 1

Studies on African males also show disproportionate representation in US prisons and that this phenomena is associated with low educational attainment among offenders from this group. Pettit & Western (2004) estimate that 30% of African Americans without post-secondary education end up in US prions, while nearly 60% of African Americans without a high-school equivalency may end up incarcerated. Sheldon (2004) suggests that, in general, the rate of incarceration for African Americans exceeds that for Caucasians by a ratio of 8 to 1. Researchers posit that the decrease in economic opportunities in inner cities throughout the United States and punitive drug policy along with tough-on-crime justice ideologies have affected a majority of low-skilled minority men (Pettit & Western, 2004). Several studies claim a positive correlation to increased crime in poor urban neighborhoods, subsequently leading to increased levels of imprisonment for the occupants of these geographic areas, many of whom are of African American ancestry (Pettit & Western, 2004). While many theories attempt to explain such unprecedented rates of incarceration in the US, the tough-on-crime approach which encompasses mandatory minimum sentencing favouring incarceration is a vital component of this discussion.

THE US WAR ON DRUGS, A CATALYST FOR MASS INCARCERATION

The changes in sentencing resulting from the war on drugs has been a leading catalyst for mass incarceration in the United States. The movement towards determinate sentencing facilitated by the war on drugs was brought about in the 1980s and continues today. Interestingly, federal funding for the war on drugs expanded from 1.5 billion dollars in 1981 to nearly 7 billion in 1989 and then to an alarming 17 billion in 1999 (Mauer, 2001). US federal drug policies resulted in the enactment of the *Anti-Drug Abuse Act* of 1986 and the *Anti-Drug Abuse Act* of 1988, which imposed mandatory minimum sentences for drug offences (Mauer, 2001). The *Anti-Drug Abuse Act* of 1986 established mandatory minimum sentences for drug offenders; it mandated an incarcerated term of five years with no parole for the sale of 100 grams of heroin, 100 kilos of marijuana, or 10 grams of methamphetamine (Roth, 2011).

SENTENCING INCONSISTENCIES

Among the most controversial aspects of this Act were sentencing inconstancies—a five-year minimum term for selling either **5 grams** of crack cocaine or **500 grams** of powder cocaine (Roth, 2011). Subsequently, two years later, Congress designated crack cocaine the only drug requiring a mandatory-maximum sentence on the first offense (Roth, 2011). The *Anti-Drug Abuse Act* of 1988 was an amendment to the *Anti-Drug Abuse Act* of 1986 which, among other things, established the Office of the National Drug Control Policy which aims to establish controls on the use, manufacturing, and trafficking of illicit drugs (Mauer, 2001). Congress implemented more than 20 new mandatory sentencing laws between 1985 and 1991. By 1994, every state had adopted at least some form of mandatory sentencing legislation (Roth, 2011).

THREE-STRIKES LAW

Habitual-offender laws, also known as three-strikes laws, are known to have a direct impact on the increase in prison population, especially relating

to drug offenders (Roth, 201). Three-strikes legislation was first implemented by individual states and then by the US federal government in 1995. The first of these laws was passed in 1993 in Washington when *Intiative* 593, which required life sentences without the possibility of parole for third-time serious felony offenders, was approved (Roth, 2011). Other states were quick to follow these new sentencing legislations. For instance, California enacted a three-strikes legislation in 1994; studies show that this originated after the abduction of Polly Klaas in the 1980s by a habitual offender who has been in and out of prison for the majority of his adult life (Roth, 2011). This case is known to be a powerful stimulus to harsher sentencing for violent offenders for a second offense and life without parole for a third offense in California (Roth, 2011). Interestingly, as a result of three-strikes legislation, some studies argue that defendants are less likely to plea bargain if they have two felonies, thus resulting in an increase in the number of cases going to trial and those awaiting trial in custody, which puts more strain on the already burdened American criminal justice system (Roth, 2011). By 2000, not only are mandatory prison terms utilized across the nation, but the three-strikes legislation exists in many states as well (Mauer, 2001).

PERVERSE IMPACT OF HARSH SENTENCING FOR DRUG OFFENCES

Law enforcement quickly responded to the ideologies imposed by the war on drugs; studies show that arrest rates for drug offenders doubled in the 1980s (Mauer, 2001); furthermore, as a direct result of the war on drugs, the proportion of incarcerated drug offenders increased throughout America (Roth, 2011). Convictions for drug law violations accounted for more than one-half of the increase in state prisons during the 1980s and early 1990s (Sheldon, 2004). Alarmingly, as pointed out by Sheldon (2004), the number of prisoners in state institutions convicted of drug offenses increased by 478% while, at the same time, there was an increase of 446% in federal prisons. The impact of sentencing changes on prison population has thus been dramatic, and studies suggest that it outweighs any changes in crime rates (Mauer, 2001). Some criminologists argue that nearly 90% of the tripling of the national prison population from 1980 to 1996 is a direct result of the changes in the imposition of punishment (Mauer, 2001). For example, Mauer (2001) posits that, as a result of the *Anti-Drug Abuse Act*, there was a 51% greater likelihood of incarceration upon conviction for drug offenders along with 37% longer prison terms. At the same time, crime rates were only to blame for 12% of the rise in prison populations (Mauer, 2001). Not only is America more likely to avail of incarceration, but the length of custodial terms for drug offenders is disproportionately longer than in other similar nations, with terms of incarceration doubling most nations and even more than tripling others (Lynch and Pridemore, 2011). This trend appears to continue today as those charged with drug-related offences account for disproportionate numbers inside American prisons (Messer, Patten, & Candela, 2016). Alarmingly, the United States imposes lengthy terms of incarceration in about 70% of drug offence cases (Lynch & Pridemore, 2011). However, harsh sentencing and mass incarceration do not appear to be an effective means to address recidivism, especially for drug offenders.

RECIDIVISM FLOURISHES

Despite America's punitive response to crime which has facilitated the enactment of mandatory minimum sentencing and lengthy terms of incarceration, rates of recidivism continue to flourish in this nation. According to Dickson (2014), the recidivism rate in America is astounding, hovering around 67% for a re-arrest within three years and around 76 % within five years of post-release. Studies show that drug offenders are among the most likely to recidivate (Nally, Lockwood, Ho, & Knutson, 2014). Drug offenders continue to comprise a substantial proportion of America's prison population (Lynch and Pridemore, 2011). Furthermore, while other countries, such as Scotland, record high levels of drug offending that are comparable to the United States, their rates of imprisonment for drug offenders is certainly much lower, thus suggesting that the sentencing policies of the United States are what foster the high rates of incarceration for drug offenders, not the crime rate as such (Lynch and Pridemore, 2011). Therefore, other approaches rather than mass incarceration, such as rehabilitative measures, may offer a more effective way to address criminality.

CONCLUDING REMARKS

The war on drugs and the subsequent mandatory minimum sentencing guidelines have been a leading catalyst for the substantial growth in prison populations within America. Beginning in the 1980s, this nation has witnessed harsh sentencing for drug related offences with the enactment of the *Anti-Drug Abuse Act* of 1986 and the *Anti-Drug Abuse Act* of 1988 which has directly impacted the rise in the number of incarcerated people within America by stipulating mandatory minimum sentences for an array of drug offences. Despite these punitive responses to criminal offending, however, the rates of incarceration remain unparalleled by any similar nation (Lynch and Pridemore, 2011); and, furthermore, the recidivism rates remain high (Dickson, 2014). Therefore, the policies put in place to address drug offending continue to be an ineffective means to address criminality and recidivism. Other measures of combating this issue need to be examined in order to prevent prisons to operate above capacity and for the effective rehabilitation and reintegration of offenders throughout the United States of America. ■

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RÉSUMÉ

The Incarceration Crisis in the United States of America

CINDY WHITTEN-NAGLE

Le rapport de Whitten, fondé sur des données probantes et traitant de l'impact de la guerre aux drogues aux États-Unis d'Amérique (É.-U.), est une lecture fascinante qui s'impose. Soulignant que l'instauration de peines minimales obligatoires en matière d'infractions liées à la drogue a entraîné une explosion de la population carcérale sans égale dans les pays développés, bien qu'on ait trouvé des données comparables dans une étude de 2011 portant sur la Russie, elle indique que les prisons américaines excèdent leur capacité et qu'il existe des inégalités au chapitre de la détermination de la peine. En outre, cette approche agressivement punitive du contrôle des drogues s'est avérée inefficace à réduire les taux de récidive. Whitten remet en question les lois et les politiques mises en place au cours des derniers vingt ans au nom de la guerre aux drogues et fait valoir qu'il existe un besoin criant d'autres mesures pour combattre la criminalité liée aux drogues aux États-Unis.

La marque de la *Mara*[1], une preuve judiciaire?

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Cet article brosse un tableau des politiques de lutte aux gangs - et des lois antigangs en découlant - qui ont contribué à une complexification de la situation au Salvador et à la stigmatisation d'une jeunesse déjà marginalisée. Après la guerre civile, le Salvador a dû faire face à une criminalité qui s'est peu à peu organisée pour devenir cette force incontrôlable, ce démon dévorant une jeunesse en quête de repère.

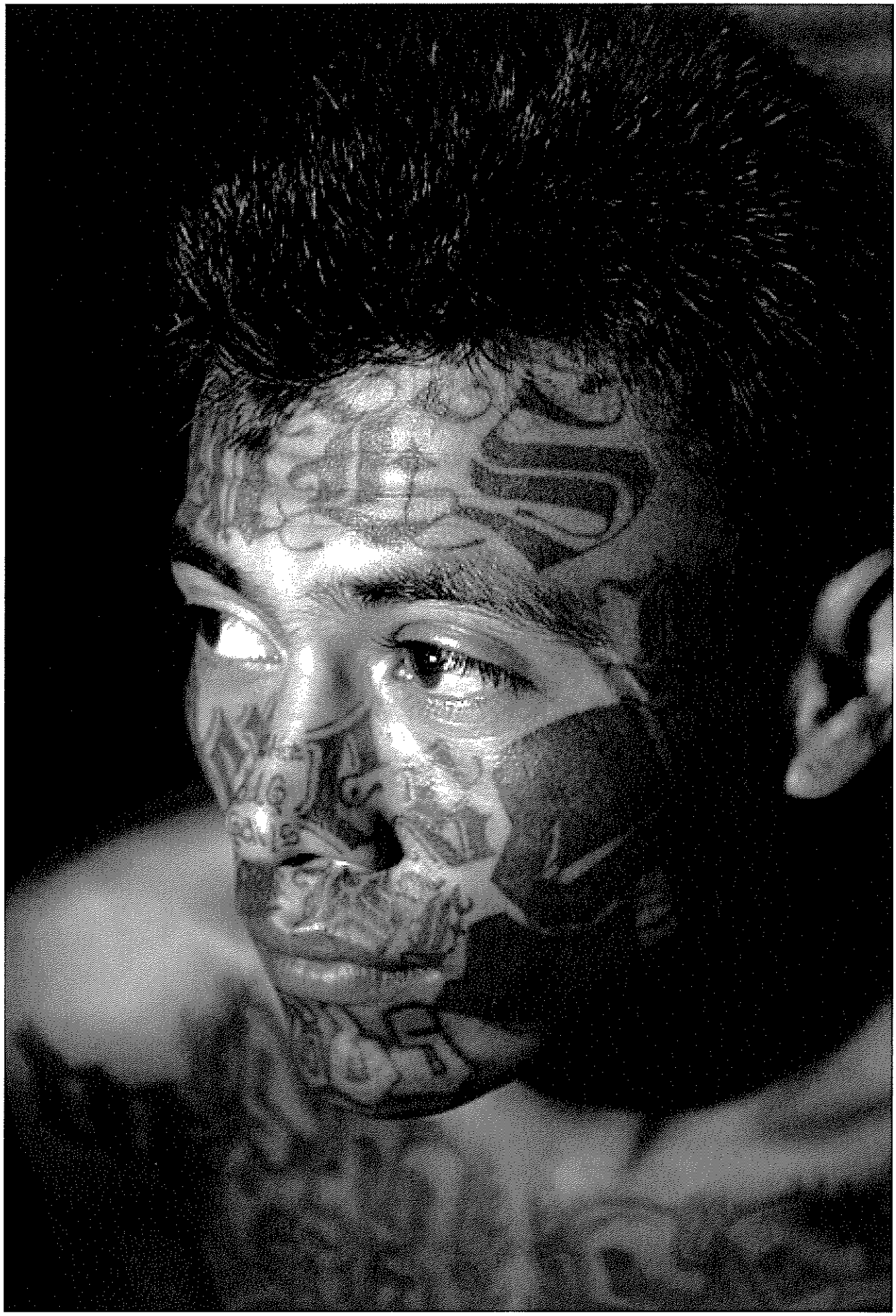
Que ce soit la croisade anti-communiste menée par les États-Unis au Nicaragua, les escadrons de la mort au Honduras, la guerre civile au Guatemala, l'Amérique centrale n'a pas été épargnée par les violences des conflits politiques. Le Salvador fut l'un de ces pays. Après une guerre civile de 12 ans – qui fera environ 80 000 morts et plus d'un million de réfugiés – la signature des Accords de paix à Chapultepec (Mexique) le 16 janvier 1992 laisse un pays décimé par la pauvreté, dont la corruption endémique n'a d'égal à la circulation des armes. Face à une population jeune ayant une tolérance élevée à la violence et aux nombreuses déportations des membres de gangs provenant des États-Unis, le Salvador se trouve confronter à l'émergence, sur son territoire, des *maras* à la sauce étasunienne. Il s'en suit alors une guerre, entre l'État et les *maras*, dont les répercussions n'ont pas fini de se faire sentir!

LA MANO DURA[2]

Après une première tentative en 1996, le gouvernement de Francisco Flores, alors à la tête du Salvador, implante, le 1er octobre 2003, une première loi antigang, nommée *Ley Antimaras*[3], dont les tenants et aboutissants vont se nourrir d'une politique dite de la main de fer, la *Mano dura*. Celle-ci institue des pratiques discriminatoires et répressives en matière de lutte aux groupes criminels: militarisation de la sécurité publique[4]; octroi de pouvoirs d'arrestation et de détention arbitraire aux forces de l'ordre; affaiblissement du fardeau de la preuve; annihilation de la présomption d'innocence; et, criminalisation de l'appartenance à un gang[5]. Le législateur introduit, dans cette loi, un nouveau délit, soit celui d'association *illicite*, qui se définit comme suit à l'art. 1:

> [Traduction libre] «...il est considéré comme une association illicite, appelé aussi « *mara* ou *pandilla* », un groupe de personnes qui trouble l'ordre public ou qui porte atteinte à la décence et aux bonnes mœurs (ou règles) et dont les membres présentent en partie ou en totalité les critères suivants: se réunissent habituellement ensemble et s'attribuent un territoire, ont des signes ou des symboles comme moyen d'identification, ont le corps marqué par des cicatrices ou des tatouages ».[6]

Autrement dit, les policiers peuvent arrêter et détenir un individu sur la base de l'apparence



physique (tatouage, habillement, cicatrice, démarche) sans qu'aucun délit, autre que celui de l'association illicite, n'ait été commis. Confronté à un niveau de preuve aussi minimaliste, des contestations se font entendre dans le milieu judiciaire, dont plusieurs juges qui refusent d'appliquer cette loi. Le 1er avril 2004, la Cour suprême de justice du Salvador (*Corte suprema de justicia*) déclare la *Ley Antimaras* inconstitutionnelle.

LA *SUPER MANO DURA*[7]

La lutte aux *maras* n'est pas seulement un enjeu sécuritaire pour l'État salvadorien, il est aussi un objet de surenchère électorale. Rien de surprenant qu'Antonio Saca, fraîchement élu à la présidence en 2004, répond à la décision de la Cour suprême de justice en implantant sa politique de la *Super mano dura*, un « nouveau » plan *Antimaras* ! Il est alors promulgué une deuxième loi antigang – la Loi pour le combat des activités délinquantes de groupes ou d'associations illicites spéciales (*Ley para el combate de las activida des delincuenciales de grupos o asociaciones ilicitas especiales*) – qui, elle passera sous le radar d'une Cour suprême de plus en plus complaisante à l'État.

Cette loi criminalise toujours l'association à un groupe. Un individu peut encore se faire arrêter sur ce chef d'accusation sans avoir commis aucune autre infraction. Il lui suffit d'exhiber des signes distinctifs, par exemple des tatouages, d'être sur la voie publique avec au moins une personne et avoir l'intention de commettre un délit, troubler l'ordre publique ou la coexistence sociale pacifique (sic). Est-ce à dire qu'un jeune ayant des tatouages de gangs participant à une manifestation avec un ami pourrait se faire arrêter et condamner pour association illicite ? Et, comment peut-on prouver l'intention (*Mens Rea*) d'un délit encore non-commis ?! La *Super mano dura* reste indéniablement une politique de continuité de la *Mano dura*.

SAUVÉ PAR LA GAUCHE ?

Le 1er juin 2009, un premier gouvernement de gauche voit le jour au Salvador par la présidence de Mauricio Funes qui se fait élire sous la bannière du FMLN (*Frente Farabundo Martí de Liberación Nacional*), ex-guérilla gauchiste convertie en parti politique à la fin de la guerre civile. Tous les espoirs sont alors permis pour le peuple salvadorien : une nouvelle vision de la sécurité nationale, une approche plus préventive et davantage axée sur la réhabilitation, voire des politiques de lutte à la pauvreté, à la violence et favorisant l'employabilité. Chassez le naturel… il revient au galop ! Le 1er septembre 2010, une troisième mouture de la loi antigang est instaurée : Loi interdisant les gangs, les bandes, les groupes, les associations et les organisations criminels (*Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal*).
Le législateur modifie de nouveau l'art. 1 :

> [Traduction libre] « … il est déclaré illégal et proscrit les gangs suivants, *Mara Salvatrucha, MS-trece, Pandilla, Dieciocho, Mara Maquina, Mara Mao Mao* et les groupes, associations ou organisations criminelles appelés *Sombra Negra* ; leur existence, leur légalisation, leur financement et leur soutien sont interdits. »[8]

D'autre part, l'art. 345 du Code pénal (*Al Codigo Penal*) définit groupes illicites comme suit en y incluant aussi les dispositions de l'art. 1 susmentionné :

> [Traduction libre] « … ayant au moins les caractéristiques suivantes : ils sont formés de trois personnes et plus ; de caractère temporel ou permanent ; en fait ou de droit ; ils ont un certain degré de structure et ont le but de commettre des crimes. »[9]

Toute personne, soupçonnée d'appartenir à l'un des groupes mentionnés dans l'art. 1 ou répondant aux critères établis à l'art. 345, peut faire l'objet d'une arrestation. En outre, même si les signes distinctifs, tels que les tatouages, ne sont plus expressément nommés dans la loi, ils restent un critère d'identification. Selon certaines sources journalistiques[10], le Bureau du Procureur général de la République (*Fiscalía General de la República* - FGR) et la Police civile nationale (*Policía Nacional Civil* - PNC) auraient établi, d'un commun accord, des critères d'application de la loi, notamment en ce qui concerne les exigences relatives à la preuve et, aux dires du ministre de la Défense, David Munguía Payés[11], le tatouage en ferait partie.

NOUS SOMMES EN GUERRE…

De gouvernement en gouvernement, de droite comme de gauche, le Salvador ne démord pas de

son approche répressive. Selon un intervenant du Centre d'étude et de coopération internationale (CECI) rencontré au Salvador, ces politiques de la main de fer auraient eu pour conséquence d'établir un climat de guerre entre l'État et les *mareros*[12]. De 1998 à 2005, plus de 11 000 membres présumés, âgés de 12 à 25 ans, auraient été arrêtés. Certains intervenants font même état de 30 000, 40 000 ou encore 90 000 personnes! Selon la Police nationale civile salvadorienne (*Policía Nacional Civil* - PNC), plus de 19 000 personnes auraient été arrêtées dans le cadre de ces lois antigangs de 2003 à 2004. Ces opérations policières auraient permis de ficher plus de 15 000 membres des *maras* et bien évidemment, le tatouage reste un signe distinctif privilégié dans ces bases de données[13].

Dans un pays où la répression étatique signifie dictature et paramilitaire, les *mareros* ont pendant longtemps bénéficié de l'appui de la classe populaire. Le recrutement des jeunes dans les *barrios*[14] devenait une réponse à cette violence étatique, une forme de résistance. Cependant, face aux arrestations massives des forces de l'ordre, les *maras* répliqueront en multipliant les attentats et les exactions envers la population. Prise en otage dans cette guerre, entre l'arbre et l'écorce, la sympathie populaire laissera, peu à peu, la place à la peur et au rejet. En effet, depuis la politique de la *Mano dura*, les homicides commis par les *mareros* sont en constante progression et les extorsions[15] ont augmenté de 330% (les *mareros* ont besoin d'argent pour leurs frais judiciaires)!

Par effet domino, le système carcéral s'est rapidement engorgé, avec les conséquences associées à ce genre de situation: recrutement massif de nouveaux membres – des jeunes en quête de protection, d'un groupe d'appartenance, voire d'une famille et en opposition à l'État – ; augmentation des émeutes et des agressions sur le personnel; et, reproduction de la violence inter-gangs. En exemple, de 2004 à 2008, la population carcérale a doublé passant de 4000 à 8000 détenus[16]. Cette surpopulation a contraint le gouvernement, pour des raisons de sécurité et de gestion, à réserver des centres pénaux pour les *mareros* et ce, selon leur statut juridique (prévenu/détenu) et leur gang. Le Centre pénal de Chalatenango hébergeait, en septembre 2008, lors de notre visite, 960 prévenus (en attente de procès), membres de la *Mara Salvatrucha* (MS 13), tandis que le Centre pénal de Zacatecoluca était plutôt réservé aux membres de la *Dieciocho* (18), le gang adverse[17].

CONCLUSION

La lutte aux *maras* demeure un problème majeur de sécurité publique et nationale au Salvador. L'extrême politisation du phénomène a nourrit inlassablement des politiques répressives et inefficaces, dites de la main de fer, qui acculent davantage ce pays dans un cul-de-sac. Malgré les multiples amendements des lois antigangs, le tatouage reste un outil – pour une police et un État dépassés par les événements – d'identification lors des arrestations et des enquêtes ainsi qu'une des « preuves » judiciaires lors des procès. En effet, depuis 1996, ces lois ont, en quelque sorte, criminalisé le tatouage. Jusqu'en 2004, elles ont permis d'incarcérer des milliers de personnes sous la seule preuve de la marque, celle de la *Mara*. Le tatouage est ainsi devenu une élément d'identification des membres de gangs et par ricochet, une preuve judiciaire justifiant les arrestations massives. Si la Loi interdisant les gangs, les bandes, les groupes, les associations et les organisations criminels de 2010 et l'art. 345 du Code pénal semblent instituer des critères exigeant une plus grande rigueur de la preuve d'association, soit autre que le simple tatouage, il n'en demeure pas moins que celui-ci continue d'imprégner le milieu judiciaire et policier ainsi que la pensée populaire.

Au Salvador, le tatouage de la *Mararesté* indéniablement l'empreinte des criminels. Si les gouvernements successifs disent vouloir améliorer le système de justice, implanter des programmes de prévention et de réhabilitation, il n'en demeure pas moins qu'aux yeux de tous... *Un buen marero es un marero muerto*[18]! ■

NOTES

1. Gang en espagnol.
2. Main de fer en espagnol.
3. Loi antigangs en espagnol.
4. Au Salvador, la police et les militaires s'occupent ensemble de la « chasse » aux membres des gangs.
5. Holland, A. C. 2013. « Right on crime? Conservative party politics and Mano dura policies in El Salvador », *Latin American research review*, vol. 48, n°1, 44-67.
6. Carlos Perez Vaquero, 5.12.2014, http://archivodeinalbis.blogspot.ca/2014/12/la-inconstitucionalidad-de-la-ley.html
7. La super main de fer en espagnol.
8. *Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal*, El Salvador, 2010, http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proscripcion-de-maras-pandillas-agrupaciones-asociaciones-y-organizaciones-de-naturaleza-criminal
9. *Reforma Al Codigo Penal*, El Salvador, http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/reformase-el-codigo-penal-en-su-art.-345-referido-a-las-agrupaciones-ilicitas/archivo_documento_legislativo
10. Tania Membreño, *La Prensa Gráfica*, 16.09.2010, http://www.laprensagrafica.com/el-salvador/judicial/142060-nueva-ley-antipandillas; *Carmen Rodriguez/Jaime Ulises Marinero, Diario La Página*, 19.09.2010, http://www.lapagina.com.sv/nacionales/39765/2010/09/19/Desde-este-domingo-entra-en-vigencia-la-Ley-Antipandillas
11. Beatriz Calderón, *La Prensa Gráfica*, 03.07. 2015, http://www.laprensagrafica.com/2015/07/03/ley-de-proscripcion-de-pandillas-tiene-problemas-segun-ministro-de-defensa
12. Membres de gang en espagnol.
13. Mourani, M. 2009. *Gangs de rue inc.* Montréal : Éditions de l'Homme.
14. Quartier en espagnol.
15. Nicolas Bourcier, *Le Monde*, 02.04.2007, http://www.lemonde.fr/ameriques/article/2007/04/02/les-maras-l-impitoyable-guerre-des-gangs-au-salvador_890720_3222.html
16. Steven Dudley, *InSight Crime*, 21.11.2010, http://www.insightcrime.org/investigations/how-mano-dura-is-strengthening-gangs
17. Mourani, M. 2009. *Gangs de rue inc.* Montréal : Éditions de l'Homme.
18. Un bon *marero* est un *marero* mort!

ABSTRACT

La marque de la *Mara*[1], une preuve judiciaire ?

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This article provides a picture of the policiesrelative to the fight against street gangs and of the ensuing anti-gang laws that have contributed to complicating the situation in Salvador and to stigmatizing already marginalized young people. Following the Civil War, Salvador was faced with crime that gradually became more and more organized, as well as an uncontrollable force that gradually consumed young people seeking a point of reference.

1. Spanish for gang

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Restorative Justice in Prisons

STEFAN HORODECKYJ
BA, BEd, JD, Toronto

To foster restorative justice in a prison setting, Horodeckyj provides an interesting summary of issues that many RJ experts recommend for the inmate. These issues, inter alia, are as follows: the practice of relaxation techniques; assuming accountability for the crime committed; healing the 'inner child'; healing from cultural and prison shame; self-forgiveness and forgiving significant others; establishing meaningful connections with others; and, infusing spiritual energy into one's life. The inmate can practice restorative justice in several ways, i.e., in an individual/informal manner and/or formally in groups, and Circles of Support and Accountability and Surrogate Dialogue programs are the most common group restorative justice initiatives. This article discusses research that illustrates the success of restorative justice initiatives in prisons in many countries including Canada, U.S.A., The United Kingdom, New Zealand, and Australia.

"Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible" (Zehr 2002, pg. 37).

The broad set of values at the heart of restorative justice include: respect, love, courage, honesty, trust, humility, sharing, inclusivity, empathy, and forgiveness. These values are interrelated and supplement each other. Prisons have existed from time immemorial, and are found worldwide. They are dehumanizing institutions that 'cage' people and deny many important human necessities related to these values.

As this truism regarding prison conditions contradicts many restorative justice principles, it begs the question - *how can restorative justice exist in prisons?* Research shows that partially restorative, mainly restorative and fully restorative justice initiatives do exist in prisons in many countries worldwide (Zehr 2002, pg.55). Such initiatives are either individual/informal or group/formal in nature. Examples of such restorative justice initiatives are found in Kitchener, Ontario, Canada at The Grand Valley Institution For Women - The Stride Program (mainly restorative-group/formal) (CSC, 2013); and in Minnesota, USA, at several correctional facilities for men and for women (mainly restorative and partially restorative–individual/informal and group/formal) (Office of Justice Programs, 2007); and Northern Ireland at several correctional facilities for men and for women (fully restorative and mainly restorative-individual/informal and group/formal) (International Institute of Restorative Practice Restoring Community. 2015); Rwanda, Gisenyi: re: 1994 Rwanda genocide (fully restorative– group/formal) (Allard, 2011).

PARTIALLY RESTORATIVE JUSTICE PRACTICES

Individual restorative justice initiatives are those that the inmate can practice on his/her own, in the absence of contact with the victim and other stakeholders in the crime committed. Partially restorative justice initiatives can address inmate needs in the following ways:

CONTINUED ON PAGE 26

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10:00 a.m. – 11:00 a.m.	**KEYNOTE ADDRESS: Tony Doob – The Road to an Effective Youth Justice System in Canada**
11:00 a.m. – 11:30 a.m.	Health Break
11:30 a.m. – 12:30 p.m.	**KEYNOTE ADDRESS: Youth Radicalization: New and Emerging Challenges** *Hosted by: Fowzia Duale Virtue Provincial Youth Outreach*
12:30 p.m. – 2:00 p.m.	On Your Own Lunch Break – Join a Yoga Class
2:00 p.m. – 3:30 p.m. **90 Minute Concurrent Sessions**	**A1. Improving Outcomes for High Risk Youth: Police, Probation, Community & Research Partnerships** *Presenters: Adrienne Peters, Elisabeth Leroux, Annie Smith and Carolyn Greene*
	A2. Radicalization of Young People through Social Media/Online *Presenters: Dr. Hieu Van Ngo, Bradley Galloway and Maria Mourani*
	A3. Making Mental Health Services Work for Youth at Risk *Presenters: Andrea Flynn, Mike Taylor and Marla Banning, Dr. Patricia Erickson, Dr. Evelyn Vingilis, Dr. Shannon Stewart and Dr. Hayley Hamilton*
	A4. Making a Difference with High Risk Youth *Presenters: George Myette, Peter Brown, Scott McDonald, Peter Banks, Greg McInnes, John Nathan and Julia Corona*
	A5. The Lived Impacts of Cyber-Bullying and Child Pornography *Presenters: Molly-Gloria Harper, Mihael Cole and Theresa Campbell and Sam Jingfors*
	A6. What to do? Extremism and Radicalization in Adult Corrections – A Federal and Provincial Perspective *Presenters: Mark Parisotto, John Ilika and Andrea Moser*
3:30 p.m. – 4:00 p.m.	Health Break
4:00 p.m. – 5:00 p.m. **Concurrent Sessions**	**B1. Youth Crossing Child Welfare & Youth Justice Systems: How to Stop Failing these Youth** *Presenters: Michelle Bain and Anthony Piscitelli*
	B2. Using Evidence Based Policies for Crime Prevention/Intervention *Presenters: Donna Smith Moncrieffe, Larry Motiuk and Ben Vuong*
	B3. Specialized Populations/Diversity *Presenters: TBA*
	B4. Examining Youth Justice with an International Lens *Presenters: Russell Smandych and John Winterdyk*
	B5. Creating Networks: The Key to Improving Youth Justice Outcomes *Presenters: Gord Boyd, Gord Irving and Cindy Murphy with Moderator: Tim Veresh*
	B6. The Etiology of Youth Gangs *Presenters: Claudie Bourget, Marylou Bossé and Véronique Kéna-Cohen*
6:00 p.m. – 8:00 p.m.	City Sightseeing Tours – 60 Seats - $15.00

SAVE THE DATE! October 25-27, 2017

CONGRESS 2017 | SHERATON CENTRE | TORONTO

Thursday, October 26th, 2017

7:30 a.m. – 8:30 a.m.	Continental Breakfast, Registration – Join a Yoga Class
8:30 a.m. – 8:50 a.m.	**Opening Remarks and Welcome** *with Mr. David Mitchell, Assistant Deputy Minister, MCYS*
8:50 a.m. – 9:50 a.m.	**KEYNOTE ADDRESS: The Evolution and Transformation of Youth Justice in Ontario**
9:50 a.m. – 10:15 a.m.	Health Break
10:15 a.m. – 11:15 a.m.	Sub Plenary Sessions **SP1. Human Trafficking / Sex Trade / Sexual Violence** *with Bruce Rivers* **SP2. Ontario Judges Discuss Challenges and Progress in Youth Justice**
11:15 a.m. – 11:30 a.m.	Travel Time to Sessions
11:30 a.m. – 12:30 p.m. **Concurrent Sessions**	**C1. Serious Violent Offences and Complex Mental Health Needs: Intensive Rehabilitative Custody & Supervision (IRCS) Order** *Presenters: TBA*
	C2. Supportive Youth Housing: An Unforgotten Key to Safe Re-Integration *Presenter: Nic Etheridge Calder*
	C3. Fetal Alcohol Spectrum Disorders as a Mobilizer in Education Change: Protective Factors for Youth with FASD *Presenters: Keewatin Patricia District School Board*
	C4. Building Capacity: Digital Learning for 21st Century Youth *Presenters: Marg Stanowski, Mark Schuler and Lloyd Redsky*
	C5. Decision Making based on Research rather than Ideology or Whim *Presenters: Dr. Lori Walls, Jennifer Lloyd & Darren Bonnick, Dr. Seref Onder and Julie Erbland*
	C6. Young Adult Offenders in Provincial and Federal Custody *Presenters: Leah Crowell, Terri Scott and Leslie-Ann Keown*
12:30 p.m. – 1:30 p.m.	Buffet Lunch – Visit our Exhibitors and Sponsors
1:30 p.m. – 3:00 p.m.	**KEYNOTE: Reconciliation: The Path Forward**
3:00 p.m. – 3:30 p.m.	Health Break
3:30 p.m. – 5:00 p.m.	**KEYNOTE SPEAKER: Robb Nash Project** *(Presentation and Performance)*
5:00 p.m. – 6:30 p.m.	Jazz, Wine & Cheese & CCJA Awards
7:00 p.m. – 10:00 p.m.	Downtown Social Event: Second City – 50 seats - $15.00

Friday, October 27th, 2017

7:30 a.m. – 8:30 a.m.	Continental Breakfast – Join a Yoga Class
8:30 a.m. – 9:00 a.m.	**Opening Remarks: A Youth Perspective** *with Keisha*
9:00 a.m. – 10:00 a.m.	**KEYNOTE ADDRESS: Youth Films and TIFF** *with Jim Cullen*
10:00 a.m. – 10:30 a.m.	Health Break
10:30 a.m. – 12:00 p.m. **Concurrent Sessions**	**D1. Countering Radicalization and Community Intervention Models** *Presenters: Kelly Gallant, Toronto Police Services and Scott McKean, City of Toronto*
	D2. How Do We Stop the Growth of Youth Gangs? *Presenters: Kelli Stevens, Michelle Prud'Homme and Luke Smith*
	D3. Early Intervention: The Key to Prevention *Presenters: Dr. Augimeri, Gillian Bowerman and Kitt Chanthaboune*
	D4. Centennial College Mock Court Experiential Learning *Presenters: Richard Kinchelea with Centennial College Justice, Law and Court related program staff and faculty*
	D5. Restorative Justice: At Work in Community & Secure Custody *Presenters: Bruce Schenk, Serge Charbonneau, Don Clairmont and Shelly Schanzenbacher*
	D6. Cannabis: A New Frontier *Presenters: TBA*
	D7. Stop Ignoring the Warning Signs *Presenter: Lance Dudar and Wendy Stone*
12:00 p.m. – 1:00 p.m.	Lunch – Exhibitors / Sponsors Booths
1:00 p.m. – 2:30 p.m.	**KEYNOTE ADDRESS: Helping Our Youth Succeed and Overcome Barriers** *with Jay Mandarino*
2:30 p.m. – 3:00 p.m.	Closing Ceremonies

Poster Presenters: Mike Taylor • Annie Smith • Joan Nandlal

CANADIAN YOUTH & JUSTICE CONGRESS 2017 *Highlights:*

Opening Keynote Speaker: Professor Tony Doob, Order of Canada Member

The Governor General of Canada's website notes that in 2014 Tony Doob was awarded the Order of Canada "For his scholarship in the field of criminology and for his role in shaping Canadian justice policy." Professor Doob's work goes back more than 40 years as a researcher, writer, teacher and consultant to government, especially in the areas of youth justice and sentencing. He worked for the Department of Justice on the development of the Youth Criminal Justice Act and was a commissioner on the 1984-1986 Royal Commission on Sentencing. He continues to provide expert advice to Parliamentary committees, carries out extensive scholarly research and publishes in major journals and other publications.

The Robb Nash Project

Robb Nash recently in the news for having tattoos of first 120 youth that have promised to not commit suicide, has shared his incredible story with thousands of young people, performing in schools, indigenous communities and detention and custody centres across Canada. Through Robb's songs and stories, hear what this Lead Singer of a Canadian Top 40 Rock band discovered through a horrific car accident that left him dead at the scene, and how he has used that experience to help young people discover purpose and meaning in life.

Ontario Judges Discuss Challenges & Progress in Youth Justice

A panel of eminent Ontario judges will present their perspective on recent trends and developments in youth justice.

CJ Skateboard Park School with Jay Mandarino

Jay Mandarino as a young adult faced many challenges including attempted suicide at ages 8 and 9 as a result of poor self esteem and learning disabilities, ADHD, dyslexia. Jay developed CJ Skateboard Park and school, a Not-For-Profit facility, to help young people overcome their own challenges to foster a better sense of self-esteem and confidence in themselves and to promote community involvement and pro-social behaviours.

Congress 2017 Registration Schedule & Fees

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CCJA MEMBERS:	Early Bird	Regular
3 Day Conference	$495.00	$535.00
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NON MEMBERS:	Early Bird	Regular
3 Day Conference	$535.00	$575.00
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STUDENTS:	Regular
3 Day Conference	$150.00

NETWORKING EVENTS:	Fee
Toronto Tour (60 available) Wednesday Oct 25 – 6 p.m.	$15.00
Second City Show (50 available) Thursday Oct 26 – 7 p.m.	$15.00
Yoga Sessions Wed. – 1 p.m., Thurs. & Fri. – 7:30 a.m.	No Charge

Full Registration fees include: access to all sessions, conference materials, continental breakfast & buffet lunch on Thursday and Friday, Wine & Cheese Reception & Awards, exhibitor and poster presentations.

Single Day Registration fees include: access to all sessions, conference materials and continental breakfast & buffet lunch on day purchased (Thursday or Friday).

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Restorative Justice in Prisons

CONTINUED

▶ *The inmate needs to foster relaxation (Casarjian 1995, pg. 107)*

Relaxation has the effect of reducing stress and thus facilitates mental, emotional, and spiritual healing. In order to foster relaxation, the inmate must find a quiet place to relax. As well, he/she must find a way to relax that works for him/her. Examples of ways of relaxing for inmates include: deep breathing; repeating words that help the person to relax; using one's imagination to relax, i.e., guided imagery - where the person visualizes a peaceful space; relaxing one's muscles; calming one's mind and body through meditation, e.g., mindfulness; exercise-including martial arts; and prayer.

▶ *The inmate needs to be accountable for the crime committed (Zehr 2002, pg. 16)*

Accountability for one's behavior is vital if the inmate is to build or re-build self-respect. The inmate must admit that he/she and not the victim is responsible for the commission of the offence and that the punishment meted out by the court is the consequence of committing the offence. Also, it is important for the inmate to understand and appreciate the extent of harm done to the victim, including the emotional, mental, physical and spiritual harm. The victim often includes the family and friends of the person directly affected by the offence, and the family and friends of the inmate, and the community at large. As well, the inmate must feel guilt, shame and remorse, for committing the offence. Finally, the inmate must move forward and address the reparation of the harm done to the victim(s).

▶ *The inmate needs to heal his/her 'inner child'*

The 'inner child' is also sometimes referred to as the child within, the real self, the true self, the divine child, or the higher self (Whitfield 1987, pg.1). This is the part of every person that holds the energy, strength and will to grow and flourish. When this inner child is wounded, then the person's emotional and spiritual development is thwarted. Inmates often are a product of dysfunctional/ abusive families, and thus often suffer with a wounded inner child. They experience 'toxic shame' (Casarjian 1995, pg. 37). This shame is severe in that the person feels inadequate and unwanted. In order to heal, the inner child must receive plenty and continuous support from the mature, grown-up part of the person. Every inner child needs to feel loved, respected and safe. As well, the inner child needs to grieve the losses suffered as a youth and to learn or relearn how to trust other people.

Regarding practical healing strategies, the inmate can write letters to his inner child and express care and love for the latter (Bradshaw 1990. pg. 91). Also, the inmate can give affirmations and kind words to his inner child. For example: I want to take care of you; it's alright to make mistakes; and your feelings and needs are real and should be respected.

▶ *The inmate needs to heal from 'cultural shame' (Casarjian 1995, pg.39)*

The inmate may feel embarrassed and guilty regarding his/her cultural status in society. This shame lowers the inmate's self-esteem/self-respect and impedes emotional healing.

The inmate may feel shame concerning his/her membership in a minority group, immigration status, psychological issues, drug/alcohol addictions, negative peer associations, learning problems, poor education, unemployment or a low paying job. Professional counselling/therapy in prison can be of great assistance to the inmate to address the shame, such as found at Vanier Center for Women in Canada, Ontario (Council of Elizabeth Fry Societies of Ontario, 2017). As well, positive thinking family and friends can be supportive to the inmate.

▶ *The inmate needs to heal from 'prison shame' (Casarjian 1995, pg.75)*

As with 'cultural shame', this form of embarrassment and/or guilt diminishes the inmate's self- esteem and hence negatively affects the inmate's emotional healing. The causes of 'prison shame' or 'stigma' include: loss of freedom to come and go as one pleases; loss of privacy; lost opportunities of being with family and friends; loss of the ability to seek

employment of one's choice; loss of the freedom to attend religious venues; and the loss of the ability to participate in leisure activities of one's choice.

To heal, the inmate must accept these losses, grieve the losses, adjust to the prison environment, and then focus his/her energy to change for the better. Most importantly, the inmate must strive to become more loving of him/herself and of others. As with 'cultural shame', trained professionals, as well as family and friends, can assist in this transformation.

- *The inmate must forgive him/herself (Casarjian 1995, pg.157)*

The inmate must feel remorse for the crime committed, however, he/she should not carry self-blame his/her entire life. In order to maximize emotional healing, the inmate must forgive him/herself by separating the criminal act(s) from his/her intrinsic worthiness and define self in a positive light.

- *The inmate must forgive significant others in his/her life*

Parents, for example, can often be a source of conflict and grief for the inmate, especially from childhood. Hence, it is important for the inmate to forgive parents for their transgressions. To accomplish this, the inmate must separate the transgression from the intrinsic worthiness of the parents. Secondly, the inmate must not seek revenge. Thirdly, the inmate must try to empathize with his/her parents (Casarjian 1995, pg. 208). Forgiving others is vital for the inmate to enhance his/her self-esteem, and to maximize emotional healing.

- *The inmate must establish meaningful connections with other persons*

Inmate isolation from other people, especially close family and friends is destructive. On the other hand, inclusion and connectedness with emotionally healthy people is nurturing and healing for the inmate. All humans are interdependent and need to give and receive care, compassion, and especially love, to be healthy and whole.

Also, for the inmate to heal, he/she needs to trust other people (Bradshaw 1990, pg. 32). Trust demands respect, openness, caring, humility, and a positive self-esteem on the part of the parties in a relationship. Trust is vital in order for the inmate to feel emotionally connected to others. In this regard, the inmate can work on nurturing trusting relationships with family and friends who visit the prison or with whom contact is maintained by other means.

- *The inmate must replenish and infuse spiritual energy into his/her life*

Spiritual and emotional healing are intertwined. Spiritual qualities that promote emotional health include: inner peace, faith, hope, tolerance, kindness, generosity, patience, forgiveness, caring, compassion and love (Casarjian 1995, pg. 239). The inmate can invoke spiritual qualities on a daily basis in his/her interactions with other prisoners, staff, as well as family and friends.

FORMAL RESTORATIVE JUSTICE INITIATIVES

Group/formal restorative justice initiatives are practised by the inmate in a group setting. Similar to individual/informal restorative justice initiatives, they address the needs of inmates as well as the obligations of the inmate and community stakeholders and the needs of victims. The needs are mainly or fully restorative in nature. Group/formal restorative justice initiatives, where they exist, such as in Hamilton, Ontario, Canada (HWDSB Restorative Justice. 2015), reinforce and supplement the individual/informal restorative justice initiatives. Two major group/formal restorative justice initiatives that are practised in various prisons around the world are: "circles of support and accountability" (CoSA), and surrogate dialogue programs, e.g., "Sycamore Tree Project" (Feasey 2009) and "Domestic Violence Surrogate Dialogue" (Domestic Violence Surrogate Dialogue, 2013).

CIRCLES OF SUPPORT AND ACCOUNTABILITY (CoSA)

CoSA bring together the inmate and members of the broader community, to formulate a realistic plan for the inmate, after the offender is released back into the community. CoSA work with the inmate to find him/her housing, education, employment, community groups and services, and to deal with many other challenges in becoming self-sufficient after their release from custody. These circles can be found in prisons in such countries as: The United Kingdom, Canada, U.S.A., Australia, New Zealand, and Thailand (2016). Regarding the effectiveness of CoSA , Canadian research statistics for example (2009), show that CoSA are extremely successful in reducing recidivism, including an 83% reduction in

recidivism in sexual offences; a 73% reduction in recidivism for all types of violent offences; and a 71% reduction in all types of recidivism (Cortoni 2009).

SYCAMORE TREE PROJECT

RJ surrogate dialogue programs bring together unrelated inmates, and victims, and sometimes community members. The "Sycamore Tree Project" (STP) developed by Prison Fellowship International, is a popular form of "surrogate dialogue program". STP is a 5-8 week intensive awareness program, works with up to 20 participants, and the groups are facilitated by Prison Fellowship volunteers. In these group sessions inmates explore the effects of crime on victims, offenders and community stakeholders. As well, the inmates learn to take responsibility for their behaviour. Finally, the prisoners plan steps they need to take to reduce offending behavior. STP programs are found in the United Kingdom-England and Wales, U.S.A., Canada, Australia, New Zealand, Hungary, Netherlands, Cayman Islands, Panama, Costa Rica, and the Philippines (Centre for Justice and Reconciliation 2017).

Regarding the effectiveness of STP, research from the United Kingdom (England and Wales) shows that STP is quite effective. More specifically, the 2009 research study carried out by Sheffield Hallam University by studying thousands of prisoners, concluded as follows: "Across the whole sample of prisoners there were significant positive attitudinal changes associated with the completion of the STP; positive attitudinal changes were associated with all groups of prisoners, including male, female, adult and young prisoners; there was an increased awareness of the impact of the prisoners' actions on the victims; and male and female prisoners demonstrated a reduced anticipation of future offending" (Feasey 2009).

CONCLUDING THOUGHTS

In summary, restorative justice healing is practiced in prisons in many countries around the world in the form of individual/informal and group/formal initiatives. Both are important and supplement each other. The goal of prison restorative justice initiatives is to address the obligations of the inmate and community stakeholders, as well as the needs of the inmate and the victim. ■

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RÉSUMÉ

Restorative Justice in Prisons

STEFAN HORODECKYJ
B.A., B. Ed, JD

Voulant favoriser la justice réparatrice dans le contexte carcéral, Horodeckyj présente un sommaire intéressant des enjeux que bon nombre d'experts en justice réparatrice recommandent pour les détenus. Ces enjeux incluent, entre autres, la pratique de techniques de relaxation, l'acceptation de responsabilité pour les crimes commis, la guérison de son *enfant intérieur*, guérir de la honte liée à sa culture et à la prison, se pardonner à soi-même et aux autres personnes significatives, établir des rapports significatifs avec d'autre et imprimer une énergie spirituelle dans sa vie. Il existe différentes façons pour un détenu de s'adonner la justice réparatrice, soit de manière individuelle/non formelle ou de manière formelle dans des groupes, dans des cercles de soutien et de responsabilité, dans des programmes de dialogue victimes-délinquants, en l'occurrence le groupe le plus commun d'initiatives de justice réparatrice. Cet article traite d'études qui illustrent le succès d'initiatives de justice réparatrice dans les prisons des nombreux pays, dont le Canada, les États-Unis, le Royaume-Uni, la Nouvelle-Zélande et l'Australie.

THE CCJA CONGRATULATES CHELSEA G. PORTER, recipient of the 2016 Mount Royal University scholarship —the benefits of which include CCJA membership and publication of Ms. Porter's article in the *Justice Report*.

Rehabilitation of Criminals: is it Worth it?

CHELSEA G. PORTER
B.A. Student (Criminal Justice) at Mount Royal University

This article offers a literature review on three generations of offender risk assessment theory and a detailed discussion of the complex issues surrounding successful offender rehabilitation programming. Porter explores the Canadian Risk-Need-Responsivity (RNR) model of offender rehabilitation within a framework of effective assessment of offender risk level, criminogenic needs, responsivity, therapist skill level, group size, and appropriate monitoring. Porter emphasizes that feasibility is also a factor, noting that this is attained even when outcomes produce only slight reductions in recidivism even when used in conjunction with incarceration. Illustrating that drug treatment programs as alternatives to prison have also been very successful in terms of reductions in cost and recidivism and that education in prisons is another means of achieving these goals depending on offender needs. As such, Porter demonstrates that rehabilitation, when appropriately targeted and implemented, is definitely worth it!

In 1974, Robert Martinson wrote his infamous "What Works?" essay, which subsequently became known as his "nothing works" essay because it proved that rehabilitation practices were not working. This led to the reframing of rehabilitative research from the area of discretionary power, to the area of effectiveness (Cullen 2012). Before "nothing works", research focused on the fact that rehabilitation programs were state inforced, that rehabilitation was about "discretionary decision making, not a genuine concern for offenders' treatment and well being" (Cullen, 2012, p.96). After this, the focus on treatment effectiveness led back to the question of 'what works' and with this change came a new treatment paradigm called the Risk-Need- Responsivity model (RNR) (Cullen, 2012, p.98) developed in Canada. In the RNR model, *risk* refers to matching an offender's risk level with the intensity of treatment, need refers to targeting criminogenic needs, and responsivity refers to matching treatment plans to each offender's characteristics (Bonta, et al., 1999; see also Dowden & Andrews, 2000; Cullen, 2012; Bonta, 1997).

DO 'REHAB' PROGRAMS REDUCE RECIDIVISM? KEYS TO A SUCCESSFUL PROGRAM

As mentioned above, Robert Martinson's 1974 "nothing works" essay initiated an overwhelming amount of research into rehabilitation. Craig et al. (2013) have noted that many tools we use today have low effect sizes but we use them because any change is better than no change. Aspirin, for example, only has an effect size of .04 in reducing a heart attack and chemotherapy only has an effect size between .8 and .11 for reducing breast cancer tumours (Craig et al., 2013). If we are willing to accept such low percentages in treatments for our physical health, is it not reasonable to accept similarly low levels of recidivism reduction in rehabilitation programs if they are also cost effective?

SOME 'REHAB' PROGRAMS WORK BETTER THAN OTHERS

Though some research shows an overall moderate effect size when looking at large groups of 'rehab' programs, most research shows that some programs are far more effective than others. In the case of Craig et al. (2013), a study of 154 outcome studies showed that effective programs, on average, reduced recidivism by 53%. In a summary of a meta-analysis conducted by Mark Lipsey, Cullen (2012) noted that "across all interventions, offender treatment worked—the overall mean effect size showed that recidivism was reduced" (p.97), but also that this was not a homogenous effect—"some programs worked really well and others not so well" (p.98).

PROGRAM INTEGRITY IS KEY

Program integrity "refers to when a programme is conducted in practice as intended in theory and design" (Andrews & Dowden, 2005, p.174). Integrity is an integral phase in the creation of an effective and personalized program. Andrews and Dowden (2005) conducted a meta-analysis on reducing recidivism, which indicated that increased program integrity produced reductions in recidivism; however, they also noted that some of the research had found this to be true only when the treatments themselves were appropriate (i.e., adhering to the principles of risk need and responsivity) and that inappropriate treatments produced the opposite effect. In fact, Andrews and Dowden (2005) found that "there was no evidence that enhancing integrity of clinically inappropriate treatment contributed to enhanced reduction in recidivism" (p.181). With appropriate treatment, studies with high integrity—specifically those with efficient interpersonal skills among staff members—had up to a 34% chance of reducing recidivism, while low integrity programs— notably those with large treatment groups—had as low as a 13% chance of reducing recidivism (Andrews & Dowden, 2005, p.181)

RELAPSE PREVENTION WORKS BETTER THAN FEAR OF IMPRISONMENT

In 1997, Bonta reviewed 154 treatments undertaken in 1990 along with a comparison group and found that appropriate treatments correlated with reduced recidivism for an average reduction of 50%, while inappropriate treatment and sanctions actually produced minor increases in recidivism (p.10). Dowden and Andrews (2000) conducted a meta-analysis of 35 primary studies consisting of 52 tests of effectiveness, and found mildly positive effects for interventions, which concluded in an overall reduction of recidivism of 7% (p. 456). These results, however, varied greatly between treatment types. Inappropriate services had a negative effect on recidivism of 1%, while the most promising services had a positive impact of 20%. When it came to targeted needs, criminogenic needs were positively correlated to reduced recidivism but non-criminogenic needs correlated negatively (Dowden & Andrews, 2000). Relapse prevention (criminogenic need) correlated positively with recidivism reduction with a 43% chance of relapse prevention, while fear of official punishment (a non-criminogenic need) correlated negatively with a 26% chance of increasing recidivism (Dowden & Andrews, 2000).

DRUG-TREATMENT PROGRAMS AS ALTERNATIVES TO PRISON

A study conducted by McVay, Schiraldi, and Ziedenberg (2004)—on the Drug Treatment Alternative to Prison (DTAP) program in Brooklyn, New York—showed that the participant offenders were 26% less likely to be arrested within two years of completion compared to non-participant offenders and were "67% less likely to return to prison than the comparison group leaving prison" (p.9). Duguid (1997) looked at recidivism rates of a group of 654 male offenders who took educational programs for at least eight months while in prison and completed two credit courses prior to release. Using the Statistical Information on Recidivism (SIR), Duguid compared an estimated rate of recidivism to the actual recidivism rate for the 654 men and found that "the men who took full advantage of the education program coalesced consistently in sub-groups that surpassed their SIR prediction to a substantial degree" (pp.158-159). Those who completed a year or less of education saw a negative improvement in recidivism, but all those who completed at least two years saw a positive improvement (Duguid 1997).

Overall, evidence seems to show that rehabilitation programs generally have at least a minor positive effect on recidivism and that the more appropriate programs can have a dramatic impact. Based on the above evidence it can safely be determined that when it comes to reducing recidivism, rehabilitation is worth it.

ARE 'REHAB' PROGRAMS COST EFFECTIVE?

In determining if rehabilitation is worth it, however, recidivism rates cannot be the only factor considered—because even if something works, it still must be paid for. To be sure that implementing rehabilitation programs in our criminal justice system is worth it, we must also consider the monetary feasibility. Craig et al. (2013) provide the following excellent explanation of how to calculate benefit-to-cost ratios on rehabilitation programs:

> There are several ways of computing this, all of which require some fairly complex accounting, but they all revolve around the comparison between two sets of figures. The first is the sum of all the costs involved in delivering an intervention programme. That entails adding together the amounts for staff salaries, premises, utilities, equipment, manuals, transport and indirect costs such as insurance. On the other side of the equation are the costs that arise when an individual commits an offence; they include police work, court hearings, legal personnel, property repairs, victim support, potential hospital treatment of victims, and costs of imprisonment or supervision. The effect size of the intervention (its impact on re-offending) is then factored in. The result can be expressed as a ratio per capita of the amount of money saved to the amount of money spent (Craig et al. 2013 p.36).

To determine if rehabilitation is cost effective, one must thus calculate how much it will cost to run a program and compare that to the amount of money the program saves. Money can be saved in a number of ways. If the treatment replaces imprisonment, it must cost less than imprisonment to be cost effective. Prison-based programs, on the other hand, are only cost effective if they result in fewer offenders returning to prison, because the costs of the program and imprisonment are combined.

ALTERNATIVE-TO-PRISON DRUG TREATMENT PROGRAMS DELIVER 2:1 SAVINGS

McVay, Schiraldi, and Ziedenberg (2004) looked into Brooklyn's Drug Treatment Alternative to Prison (DTAP) program, which can last up to two years. Not only did the program have significant effects on recidivism, but it was also cost effective, costing only $32,974 for two years compared to the $64,338 it cost to imprison a person for 25 months. This is nearly half the cost for nearly the same amount of time. In Maryland, treatment programs like the Community Options Programs (COP) saved the state $16,000 annually in the cost of housing an offender (McVay, et al., 2004). Other studies "have shown that, dollar for dollar, treatment reduces the societal cost of substance abuse more effectively than incarceration does" (p.6). Drug treatment programs both in and out of prison have shown as much as a $2.69 benefit per dollar spent, while therapeutic community programs have shown a benefit of $8.87 (McVay et al., 2004).

A study of one of Correctional Service of Canada's substance abuse treatment program showed annual savings of around $2000 per inmate. Another study—of a program aimed at treating substance abusers in general rather than offenders—showed reductions of "between 1.4 and 2.2 million dollars" (Brown 59) in crime-related costs. Likewise, a study of the Massachusetts Treatment Center (MTC), which works with male sex offenders, showed that offenders completing the treatment had a 15% lower recidivism rate than offenders who had received only prison time, and the state of Massachusetts saved $68.000 for each offender going to the MTC instead of prison (Craig et al., 2013).

Brown's analysis of cost savings for different programs showed that "every dollar allocated towards vocational and basic education programs yields cost savings ranging from $1.71 to $3.23. Similarly, job search and/or counselling programs generate positive returns ranging from $2.84 to $4.00" (59). "Short-term financial assistance and subsidized job placement programs [, on the other hand,] generate break-even returns (e.g. 1 dollar spent = 1 dollar gained). Brown also illustrated that "adult cognitive behavioural treatment programs generate economic returns ranging from $2.54 to $11.48 for every invested program dollar" (10). These figures show that 'rehab' programs actually do save money.

The above evidence shows that rehabilitative programs can incur cost savings that are not possible with incarceration. As long as programs are appropriate and reduce recidivism, they save the correctional system money by reducing the number of repeat offenders. Rehabilitative

programs can be combined with incarceration —thereby reducing recidivism for future benefit —or they can replace incarceration and have both present and future benefit.

CONCLUDING REMARKS

The most important part of effective rehabilitation of offenders is ensuring that the treatment programs used are appropriate. Such programs are based on sound social theory, adhere to procedure, successfully target the risk level, criminogenic needs, and degree of responsivity— and are adequately adapted to the unique characteristics of each individual offender, and are monitored to ensure integrity of all of these aspects. Such programs are the most effective, and sometimes very effective. Appropriate programs are able to drastically reduce recidivism and therefore save money by reducing the number of people returning to prison. When such treatment programs are used in place of a prison term, there are reductions in the number of people going to prison in the first place as well as returns from reduced recidivism. ■

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RÉSUMÉ

Rehabilitation of Criminals: is it Worth it?

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de la Mount Royal University, dont les avantages incluent une adhésion à l'ACJP et la publication de son article dans *Actualités-Justice.*

Cet article propose une revue de littérature relative à trois générations de la théorie de la gestion des risques chez les délinquants ainsi qu'une discussion détaillée des enjeux complexes entourant la programmation à la source de la réadaptation réussie des délinquants. L'auteure se penche sur le modèle canadien du Risque-Besoin-Réceptivité (RBR) de la réhabilitation des délinquants dans le cadre d'évaluations efficaces tenant compte du niveau de risque des délinquants, de leurs besoins criminogènes et de leur réceptivité, des compétences des thérapeutes, de la taille des groupes et d'un contrôle convenable. Porter insiste que la faisabilité constitue également un facteur, soulignant que celle-ci est atteinte même lorsque les résultats ne démontrent qu'une faible réduction de la récidive et même lorsque cette approche est utilisée en conjonction avec l'incarcération. Elle souligne que les programmes de traitement de la toxicomanie comme mesure de remplacement de l'incarcération se sont avérés très efficaces au chapitre des économies de coûts et de la récidive et que l'éducation dans les prisons constitue un autre moyen d'atteindre ces buts en fonction des besoins des délinquants. Porter démontre ainsi que la réadaptation en vaut absolument la peine lorsqu'elle est ciblée et mise en œuvre.

Rape Culture on University Campuses in Canada: The Power of Privilege?

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Society is changing and adapting to the circumstances that arise in Canada. One thing that has not changed, however, is who holds the power. Power follows a cyclical model allowing groups of people to remain at the top of the hierarchy. The privileged retain privilege while those on the margins remain excluded. We have seen these power groups thrive and use their influence to shape society in a way that better suits them. These people at the 'top' are termed 'liberal subjects' against whom all 'other' subjects are measured. The liberal subject is the embodiment of societal norms and ideals in an individual—one that perfectly represents society's attitudes and beliefs. It is troubling then that a certain crime has crept into this circle of privilege. I am talking about sexual assault on university campuses as an issue that is directly related to the liberal subject and in which these supposed 'models' of society are both perpetrators and victims. This issue has been a hot topic in the media over the past couple of years. Perhaps due to the nature of the crime of sexual assault, however, the concern seems to be less about solving this problem for the safety and well-being of students than about how this type of crime casts doubts on the legitimacy of the liberal subject and his place in the ideal society or university. Unfortunately, this has led to the protection of societal ideals as opposed to addressing the root problems.

WHO OR WHAT IS THE LIBERAL SUBJECT?

It is first important to define exactly who we are talking about when we mention the liberal subject. The liberal subject is the measuring rod by which 'normalness' is gauged. Individuals who fall into this category are those who uphold certain social norms. Some of these commonly held norms involve being educated, having a job and a family and making money (Chartrand 2016). The subject has also established the importance of being white in our society and ensures that whites will be faced with the fewest barriers in life. As Yasmin Jiwani illustrates (2011), the continued predominance of the liberal subject is in fact largely based on "race." She states that "race is the colour line separating out those with privilege and those whose lives can be subjected to various forms of exclusion" (Jiwani, 2011: 17). So, in our society, white people tend to automatically assume a position of privilege and those who are not white are excluded. This is not to say non-whites cannot attain a position of privilege, but they will certainly face significant obstacles along the way. Now that we have established where the power is in society the question becomes, *how does it stay there?* The answer, again is that exclusion is manifested through institutions. Universities are an excellent example of one such institution, as they are the quintessential representation of privilege and exclusion. The large expensive-looking buildings

that make up our campuses clearly depict symbols of this power.

Higher learning also relies on the concept of rejection, which allows 'them' to hand pick those who attend 'their' university. In order to get in, one must *have money* and conform to the expectations established and maintained by high society. Academic excellence in the years leading up to university is also important and is often dependent on the resources that are accessible to a certain individual. Sound familiar? Universities are looking for liberal subjects, and if you don't fit the mold, you are likely to be excluded. Attending university makes it much more likely that you will be able to get a good job and pass the privilege to the next generation. This epitomizes the cycle of power in our society, which is structured to facilitate the upward mobility of those who already have privilege and make it difficult for anyone else to acquire privilege.

MAINTAINING THIS CYCLE OF POWER IS A TWO-PART PROCESS

We know that institutions and other social structures keep those with privilege at the top, but this cyclical model also involves keeping those without privilege down to ensure they don't ever threaten the top of the hierarchy. As Margaret Malloch and Elizabeth Stanley pointed out in 2005, we see these "others" as "a risky group that needs to be prevented, contained and, preferably, repatriated" (Malloch & Stanley, 54). This was specifically addressed to immigrants however the same sentiment applies to non-immigrants who simply have not attained the desired societal status and attitudes for whatever reasons. These individuals and groups of people are seen as threatening and need to be brought into order. This is achieved through the criminal justice system. Our laws are specifically designed to target the non-liberal subject. An example of this is harsh punishments for drug-related crimes that we know to be prevalent among lower-income minorities (Chartrand). As Khalil Gibran Muhammad (2011: 75) has pointed out, "mass incarceration has come to dominate the cultural, political, and economic landscape of the nation since the 1970s". This takes social exclusion to the next level. We are locking up certain minority groups so they are literally 'taken out' of our society. In Canada, there is a large over representation of Indigenous men and woman as well as a high number of black men and women who are imprisoned (Jiwani, 2011: 17). This is certainly not because Indigenous or African-Canadian people are inherently more deviant than those sheltered by the 'white' umbrella. This over representation is the result of a society that sets certain cultural groups up to fail in order to keep them from ever getting a share of the privilege enjoyed by the liberal subject.

DEVIANT ACTS OF THE LIBERAL SUBJECT, SUCH AS RAPE ON CAMPUS, ARE OFTEN OBSCURED

It is important to keep this context in mind when talking about sexual assault on campus, because such a crime does not fit the liberal narrative. In order to understand how different this crime is, it is imperative that we understand the norm. The structure of Western society is such that deviant acts by the liberal subject are obscured and a focus is put on the criminal activities of 'others'. Sexual assault on university campuses is a crime in which the liberal subject is involved or partakes—as both victim and perpetrator. The narrative we tell ourselves is that minority groups harm those in privileged groups. In these cases it is easy to fall back on a narrative of good vs evil that is black and white, but this rarely applies in the case of sexual assaults on campuses. This is people of privilege harming other people of privilege which is shocking to us because it is not what we are used to hearing. This crime strays so far from the norm, we don't know how to deal with it and we panic. News items such as "1 in 4 experiences sexual victimization on Quebec campuses, study says", found in The Globe and Mail (2016, September 22) for example, seem to be written specifically for shock value and to stimulate a sense of uneasiness and panic in the public. A similar tone is taken in a CBC (2016) news article entitled, "How recent campus controversies forced a debate about rape culture in Quebec". The shock value of this article is amplified because it seems to blame Quebec for a rape culture that is actually common to university campuses across the nation (Kane 2016), and in many other countries (McLaughlin 2016). This shows that Canadians are not equipped to deal with problematic issues within the circle of privilege due to a lack of experience handling crime among the elite.

THE PRIVILEGE OF WHITENESS IS INVISIBLE

In a society focused on difference, the privilege of whiteness is invisible. We acknowledge how people stray from the norm and spend very little time focusing on the norm in and of itself. Herein lies the difficulty of addressing sexual assault on university campuses. To do so means acknowledging that even

those at the top of the hierarchy commit heinous crimes. However, members of society do everything possible not to actually acknowledge the problem and instead become defensive by deflecting blame onto a rape culture of another cultural group rather than as a serious problem afflicting the privileged groups attending university campuses in general. Danielle Dirks, caroline Heldman & Emma Zack refer to this as "white protectionism". White protectionism is "a set of social and symbolic boundaries that give shape, meaning, and power to the social category white" (Dirks, Heldman & Zack, 162). Whiteness is not simply determined by skin color but also by an inherited attitude and behavior. Individuals who fit this whiteness 'mold' protect like individuals because they have an image to defend as a larger group. In fact, a study by Dirks et al. (2015) reveals that whites engage in a greater amount of protectionism than any other group and that whites found guilty of criminality are often portrayed as victims of circumstance (Dirks et al., 170). It is interesting that deviance by white people is cited as "circumstance", when it is they who create the circumstances. Universities create their environments; nothing is forced upon them except perhaps a mandate to do everything in their power to keep students safe.

DOES SEXUAL ASSAULT ON CANADIAN UNIVERSTIY CAMPUSES ARISE FROM A SENSE OF ENTITLEMENT AND ABUSE OF POWER AMONG THE PRIVILEGED MEMBERS OF SOCIETY?

In addition, the crime of sexual assault on university campuses is one arising from a sense of entitlement and abuse of power. As Kohm and Gacek illustrate, the criminal act "involves an attitude toward the rules, an evaluation of their justness and appropriateness" (Kohm et al., 2016). What we can conclude from this is perhaps that this type of deviance is not so different from other types. Criminological research shows that much of the crime committed by the 'other' group is a result of culture, environment and circumstance. Does it not follow that the great privilege enjoyed by generations of whites may have bred a culture in which the potential for sexual assault is high? Regardless, it certainly seems to be a problem that white privilege has created.

THE PRIVILEGED LAY BLAME ON 'OTHERS' OR THE EDUCATIONAL INSTITUTION

Accepting blame is not so easy, however, because for a very long time the privileged members of our society have resolved such problems by blaming others. As discussed earlier, Western society has historically done everything it can to suppress minority groups by casting them as the root of social problems, while presenting the top segment of society as problem free. In dealing with sexual assault on campuses, our two main reactions are blaming the victim for failing to protect herself or blaming the school for being too permissive. Because the perpetrator of such crimes often fits the liberal citizen mold, there is a reluctance to assign guilt. Victim blaming is a common reaction because it is easier to exclude the victim than the perpetrator. If we were to blame the perpetrator, we would have to pick apart why the individual appeared to be a liberal subject but did not behave like one. Instead, society chooses to believe that something the victim did must have triggered this act. Victim blaming is prominently featured in the CBC News article entitled "John Abbot student says police, college mishandled sexual assault allegations" featuring a young woman whose claims of sexual violence against her were dismissed simply because she was seen walking into school with the perpetrator on the day of the attack (Shingler 2016). Sexual assault is also known to be an extremely gendered crime, with perpetrators and victims typically being male and female, respective, making it that much easier to cast aside the victim. We live in a patriarchal society that still privileges men over woman and so women are already not quite liberal subjects within our ideology and the traditional gender roles embedded therein. This also explains why many victims of sexual assault will not come forward; they know the guilt will be flipped onto them and they will be excluded.

As noted, if the victim is not being blamed, the reaction is usually to blame the school. Articles such as The Globe and Mail's "University of Victoria silencing sexual assault victims, students say" (Kane 2016) and CBC News' "Universities face increasing pressure to address campus sexual assault" (Weikle 2016) are both very critical of the educational institutions involved and call for them to do more to solve the problem. Again, we see blame deferred away from the actual perpetrators of the crime, in these cases the most privileged cultural group in Canada: the whites. Universities play an important role in reinforcing the societal norms and ideals and thus in molding young adults into liberal subjects. If the system is broken then society has the power to fix it but the problem must

first be acknowledged. Universities are a reflection of Canadian society; rather than simply casting them as failures for not upholding liberal ideals, we must ask why they were unable to uphold them.

CONCLUDING THOUGHTS

It is clear in analyzing sexual assault on campus that anything will be done in order to not admit that there may be a defect in the liberal subject or the privileged white cultural group that he embodies. Our problem-solving strategy of rejecting difference and exclusion is so deeply embedded in our society that we seem to be incapable of any other reaction. In consistently pushing away anything and everything seen as threatening to societal norms and visions of an ideal society, we fail to address the root cause of certain problems. All society has done is cast them aside. In other words, we don't deal with them. Perhaps this is why the rape culture of Canadian universities persists. As evidenced in the media accounts of sexual assault on university campuses and through the analysis herein presented, this situation is unacceptable. Deviance has crept into the backyard of the white man and his institutions. ■

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RÉSUMÉ

Rape Culture on University Campuses in Canada: the Power of Privilege?

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La société change et s'adapte aux changements qui surviennent au Canada. Cependant, une chose n'a pas changé, en l'occurrence qui détient le pouvoir. Le pouvoir se conforme à un modèle cyclique qui permet à certains groupes de gens de demeurer au sommet de la hiérarchie. Les privilégiés conservent leurs privilèges, alors que les personnes confinées à la marge demeurent exclues. Nous avons vu ces groupes puissants prospérer et utiliser leur influence pour façonner la société d'une manière qui leur convient mieux. On dit des gens au sommet que ce sont des « sujets libéraux » qui servent de mesure pour tous les autres. Les sujets libéraux incarnent les normes sociétales et les idéaux d'une personne, qui représente parfaitement les attitudes et les croyances de la société. Ainsi, il est troublant qu'un certain crime se soit infiltré dans le cercle des privilégiés. Je veux parler ici des agressions sexuelles sur les campus universitaires, un enjeu qui se rattache directement au sujet libéral et, dans le cadre duquel, ces soi-disant modèles de la société sont tantôt les agresseurs, tantôt les victimes. Il s'est agi d'une question brûlante dans les médias depuis une couple d'années. Toutefois, peut-être en raison de la nature du crime qu'est l'agression sexuelle, on semble moins préoccupé de résoudre le problèmepour assurer la sécurité et le bien-être des étudiants que de s'attaquer à comment ce type de crime sème le doute quant à la légitimité du sujet libéral et de sa place dans une société idéale ou à l'université. Malheureusement, cela a mené à la protection des idéaux sociétaux plutôt qu'a des efforts de s'attaquer aux problèmes fondamentaux.

Offenders Deemed Not Criminally Responsible: Fugitives from Justice?

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Ethan Pohl offers an in-depth exploration of the issue of the not criminally responsible (NCR) defense within a context of sensationalism and selective presentations by the media that frame NCR offenders as fugitives from justice. He posits this as an example of the social construction of justice by the media, which often fails to engage in discussions on mental illness when reporting NCR cases and thus preys on and nourishes a narrow conception of justice by Canadians. Pointing out that the media has gone so far as to explicitly state that a verdict of NCR does not constitute justice, Pohl reports that critics of Bill C-54 (2013)—the Not Criminally Responsible Reform Act, which introduced a new designation of high-risk NCR—considered it a response to public outrage over a small number of high-profile NCR cases that did nothing to enhance public safety. Pohl argues that Canadians find it extremely difficult to separate guilt from punishment, even for offenders with long histories of mental illness, and that this illustrates the continuing clash and tension between classicalism and positivism within our justice system.

A major premise of the Canadian justice system is that offenders who cannot determine right from wrong due to mental illness should be treated differently than 'traditional' offenders. The *Criminal Code of Canada* states that "no person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong" (Criminal Code, C-46 s. 16, 1985). This premise manifests as the not criminally responsible (NCR) defense available to all accused persons within the justice system. If an offender is found to be not criminally responsible for his or her actions, he or she is committed to a mental institution for treatment, and released at a time when a review board determines the offender to no longer pose a danger to society (Government of Canada 2015).

THE SOCIAL CONSTRUCTION OF JUSTICE AND THE MEDIA

Crime and criminality are often the focus of media reports, however, crime coverage is frequently a misrepresentation of reality and caters to ratings. Violent crimes are over represented, facts are distorted, and the overall portrayal of crime and justice is blurred to appeal to a larger consumer audience (Dowler et. al, 2006). Furthermore, the media often uses its position, knowingly or not, to reproduce dominant social narratives about crime. This is true with NCR cases. The media construct consistently frames offenders deemed not criminally responsible in a way that implies the

Mental illnesses

NCR verdict does not constitute justice and that offenders receiving it are escaping justice.

Both the not criminally responsible defense and offenders who are designated as warranting it violate many of our societal expectations and norms. Our society has a very narrow conception of 'justice' when it comes to crime, in the belief that a criminal must 'do time', i.e., receive and complete a punishment appropriate to their crime, as determined by society. Thus, there is a belief that we all must be penalized for our transgressions in a way that society deems acceptable. We have institutionalized this construction through the legal and penal systems, which assign varying degrees of offensiveness (e.g., theft vs. murder) as per accepted social norms and a proportional punishment (a fine vs. life in prison). This system is designed to be efficient and decisive (whether it is in reality is a different question beyond the scope of this article) with only two possible outcomes: acquittal and freedom or guilt and punishment.

IMPLICATIONS FOR NCR CASES OF SOCIETY'S ARGUABLY NARROW CONCEPTION OF JUSTICE

Offenders designated not criminally responsible challenge our social construction of justice by undoing the association between guilt and just punishment. As offenders seeking the NCR designation must admit to their crimes, all successful NCR defenses involve an offender being deemed 'guilty' of having committed the crimes they are charged with. After a successful NCR defense, the offender is remanded to a mental institution for treatment but is not required to spend a set amount of time there. Rather, such offenders are allowed to return to society when they are deemed to no longer pose a risk to public safety.

In *R. v. Winko*, the Supreme Court of Canada noted "because the NCR accused's liberty is not restricted for the purpose of punishment, there is no corresponding reason for finitude. The purposes of restriction on his liberty are to protect society and to allow the NCR accused to seek treatment" (Supreme Court of Canada, 1999). As the offender deemed NCR spends an indeterminate amount of time in a mental health institution, it is possible that an offender that committed a crime such as murder may be released or allowed to travel outside a mental institution within a few years of committing said crime. This clashes severely with society's perception of justice. NCR offenders are determined to have committed crimes, but avoid the punishment society has prescribed for such crimes. They therefore disassociate just punishment from guilt, which challenges the foundation of our penal system and society's attitudes toward punishment.

DRAMATIC EFFECT AND IMPACT OF MEDIA 'FRAMING' OF NCR OFFENDERS AS FUGITIVES FROM JUSTICE

It is not difficult to locate media depictions of NCR offenders as fugitives from justice. For example, in the case of Matthew de Grood, a graduate student deemed NCR for the murder of five individuals at a house party, the media presents the narrative that the NCR verdict was unjustified. One article covering the case opens with the sentence "Matthew de Grood, who admitted to stabbing five people to death at a 2014 Calgary house party, has been found not criminally responsible" (Leung 2015). The article immediately highlights both de Grood *admitting* to the murders and the verdict of NCR, thereby presenting the dissociation between accepted concepts of guilt and punishment. The facts that de Grood suffered from mental illness when he committed the crime, and that both the defense and prosecution agreed on the NCR verdict, is not mentioned until much later in the article.

Furthermore, the article chooses images that frame de Grood as a contemptuous killer rather than a man with a mental disorder. The sketch presented in the article was made at a court hearing two years prior to sentencing. In it, de Grood appears to be smirking and the background is red, a colour not prevalent in Canadian courtrooms, but a common signifier of violence and blood, especially in an article about murder. The other sketch, however, was made during sentencing and depicts de Grood as much less threatening. The media's choice of an older, less-relevant photo suggests that it was used for dramatic effect. The usage of this photo influences readers into believing that de Grood killed because he wanted to and thus should not have received the NCR designation.

MEDIA REPRESENTATIONS OF NCR CASES OFTEN FAIL TO DISCUSS MENTAL ILLNESS AT ALL

The media's sensational and selective presentation of NCR offenders is further apparent upon examination of other articles. In one case, the media presented the actions of a man deemed NCR as a

result of racism instead of mental illness. The media emphasized Jeff Weber's beliefs that "black skin is a genetic abomination, the outcome of breeding gorillas with reptiles. Weber is convinced his victim is infected by Satan, and a drug dealer" (Gardner 2016). The article does not mention Weber's mental illness.

INFLUENCE OF MEDIA NARRATIVES ON THE PUBLIC

Media narratives hold an extremely high level of power over the populace. Narratives around the supposed harshness and violence of the prison system have been shown to be so influential that even ex-prisoners believe such narratives (Yousman 2013). If media narratives can influence those with firsthand experience to disregard their personal experience in favor of a contradictory media narrative, they may also provide a strong influence on public opinion. Violent crimes have especially strong appeal for the media, politicians, and the public. The use of heinous crime stories as rationale for the advancement of political causes and harsher sentences is a regularly occurring event (see Dowler et. al., 2006). This is also known as penal populism.

This can also be the case with unrepresentative coverage of NCR verdicts. From 2005 to 2012, only 1% of total criminal cases resulted in a verdict of NCR, while only 1% of NCR verdicts were in response to homicide (Statistics Canada, 2015). Yet a quick Google search (made on Dec. 1, 2016) for "not criminally responsible" and selecting the "News" filter brings up ten articles, nine of which are related to murder and one to assault. As the public continues to be presented with the media narrative that murderers who receive NCR verdicts are thereby escaping just punishment for their crime, political changes may follow.

IMPLICATIONS OF THE 2013 NOT CRIMINALLY RESPONSIBLE REFORM ACT

In 2013, Canada's Conservative government passed Bill C-54, titled the *Not Criminally Responsible Reform Act*. The bill introduced a new designation of "high-risk" NCR, to be used in the case of "serious and violent" crimes. Offenders designated "high-risk" NCR are now subject to a mandatory minimum sentence of three years in a mental health institution before a provincial review board initially hears their case. Review board hearings are also moved from yearly to once every three years after the initial review, and high-risk NCR offenders are unable to receive unescorted passes outside mental institutions and their release is now contingent on court (instead of review board) removal of the designation (CBC News 2013). The bill was in response to public outrage over a small number of high-profile NCR cases in which offenders committed murder and were then allowed escorted passes outside their mental institutions within two years. Critics of the bill noted that it was a reactionary response to cases unrepresentative of the NCR verdict as a whole, and it did nothing to stop mentally ill people from offending in the first place (Dempsey 2013 & 2014).

Both the public outrage and government response to this outrage in Bill C-54 further highlight society's belief that NCR offenders are fugitives from justice. Confinement and the limitation of movement are characteristics of traditional prison sentences, and society views NCR offenders as not being sufficiently confined. Society has taken steps to confine them appropriately, making their living conditions as similar to a custodial prison sentence as possible. By limiting the time between review board hearings and limiting passes into the community, society is imposing a hierarchy of mobility onto NCR offenders. As Zygmunt Bauman pointed out, "all dominance consists in the pursuit of an essentially similar strategy...to leave as much freedom of manoeuvre to the dominant, while imposing the strictest possible constraints on the dominated" (Bauman 1998, pg. 69). The term 'liberal subject'is used to define members of society that fit socially beneficial molds in terms of race, class, gender, religion, etc. For example, in Canada, a white middle-class male fits the liberal citizenship model, while a homeless Aboriginal woman engaging in survival sex work does not. Additionally, 'liberal society' refers to our current society, where liberal citizens are privileged over those who do not fit the model. Mobility is something society affords only to the dominant liberal subject and NCR offenders are doubly restricted from inclusion in this group due to criminality and mental illness. Society attempts to cleanse the world of such "social dirt" to increase the cleanliness of liberal society (Coleman 2009). While it could be argued that this only applies to offenders designated "high-risk", the criteria for applying the high-risk designation are entirely arbitrary and could be applied to almost any criminal case (Government of Canada 2014).

MEDIA EXPLICITLY STATES THAT A VERDICT OF NCR DOES NOT CONSTITUTE JUSTICE

Perhaps the clearest insight into the media position on justice and NCR offenders comes from an article in the

Toronto Star covering the second trial in the homicide case of Guy Turcotte. Turcotte was originally found NCR in the double-murder of his young children, but a second trial saw him convicted and sentenced to life in prison. The article framed NCR as a clichéd defense that is "sold" to juries, claiming the second jury "got it right" and "finally exacted justice for the children" (Dimanno 2015). The media explicitly stated that a verdict of NCR does not constitute justice and a traditional 'guilty' verdict and a custodial prison sentence does. The verdict rendered in the second trial and the media's response to it illustrates the relief experienced by society when someone originally seen to escape justice gets his 'just deserts' and is given a prison sentence. Here, the association between guilt and punishment, and in turn societal order, was reestablished.

CONCLUDING REMARKS

The media presents and reifies the dominant social narrative surrounding offenders designated NCR, which is that the verdict does not constitute justice and offenders who receive it are 'escaping justice.' Society finds it extremely difficult to separate guilt from punishment, and mental illness does not seem to be significant enough of a factor to allow it. In particular, this illustrates the continuing clash and tension between classicalism and positivism in our justice system. Should all offenders be treated the same under the law, with punishment by means of a prison sentence being the appropriate, and only, response (classicalism), or should each case be treated as unique, and offenders rehabilitated instead of confined (positivism)? It appears, especially with respect to NCR offenders, that society has not yet reached a consensus. ■

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RÉSUMÉ

Offenders Deemed not Criminally Responsible: Fugitives from Justice?

ETHAN POHL
Étudiant de 2e année du B.A. au département de Sociologie de Bishop'sUniversity

Ethan Pohl nous propose une exploration en profondeur de la question de la défense de non-responsabilité criminelle dans un contexte de sensationnalisme et d'exposés sélectifs par les médias qui présentent les délinquants non criminellement responsables comme des personnes échappant à la justice. Il postule que cela constitue un exemple de la construction sociale de la justice par les médias. Il avance que ceux-ci négligent souvent de discuter de santé mentale lorsqu'ils traitent de cas de non-responsabilité criminelle et que, de ce fait, ils s'attaquent à et alimentent une conception étroite de la justice par les Canadiens. Il souligne que certains médias sont même allés jusqu'à affirmer explicitement qu'un verdict de non-responsabilité criminelle n'est pas de la justice. Pohl rapporte que les opposants au projet de loi C-54 (2013), *Loi sur la réforme de la non-responsabilité criminelle* – qui a introduit la notion d'accusé non criminellement responsable à haut risque – y voyaient une réaction à l'indignation publique envers un nombre peu élevé de cas d'accusés non criminellement responsables à haut risque ayant une grande notoriété, une notion qui n'améliorait en rien la sécurité publique. Pohl fait valoir que les Canadiens ont beaucoup de difficulté à dissocier la culpabilité du châtiment, même dans le cas de délinquants ayant un long historique de maladie mentale et cela illustre l'affrontement et les tensions constantes entre le classicisme et le positivisme au sein de notre système de justice.

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